6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–HQ-OAR-2016-0598; FRL-XXXX-XX-OAR]

RIN 2060-AT16

Interstate Transport of Fine Particulate Matter: Revision of Federal Implementation Plan Requirements for Texas

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is finalizing withdrawal of the federal implementation plan (FIP) provisions that require affected electricity generating units (EGUs) in Texas to participate in Phase 2 of the Cross-State Air Pollution Rule (CSAPR) trading programs for annual emissions of sulfur dioxide (SO_2) and nitrogen oxides (NO_X). Withdrawal of the FIP requirements is intended to address a decision of the U.S. Court of Appeals for the District of Columbia Circuit (D.C. Circuit) remanding the CSAPR Phase 2 SO_2 budget for Texas to the EPA for reconsideration. With this action, the EPA is also determining that, following withdrawal of the FIP requirements, sources in Texas do not contribute significantly to nonattainment in, or interfere with maintenance by, any other state with regard to the 1997 national ambient air

quality standard (NAAQS) for fine particulate matter ($PM_{2.5}$). Accordingly, we are also determining that the EPA has no obligation to issue new FIP requirements for Texas sources to address transported $PM_{2.5}$ pollution under Clean Air Act (CAA) section 110(a)(2)(D)(i)(I) with regard to that NAAQS. Finally, the EPA is also affirming the continued validity of the Agency's 2012 determination that participation in CSAPR meets the Regional Haze Rule's criteria for an alternative to the application of source-specific best available retrofit technology (BART). The EPA has determined that changes to CSAPR's geographic scope resulting from the actions EPA has taken or expects to take in response to the D.C. Circuit's remand do not affect the continued validity of participation in CSAPR as a BART alternative, because the changes in geographic scope would not have adversely affected the results of the air quality modeling analysis upon which the EPA based the 2012 determination.

DATES: This final rule is effective on [INSERT DATE OF FEDERAL REGISTER PUBLICATION].

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA-HQ-OAR-2016-0598. All documents in the docket are listed and publicly available at *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Questions about the withdrawal of CSAPR FIP requirements for Texas EGUs should be directed to David Lifland, Clean Air Markets Division, Office of Atmospheric Programs, U.S. Environmental Protection Agency, MC 6204M, 1200 Pennsylvania Avenue NW, Washington, DC 20460; telephone number: (202) 343-9151; email address: lifland.david@epa.gov. Questions about the sensitivity analysis regarding CSAPR participation as a BART alternative should be directed to Melinda Beaver, Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, 109 T.W. Alexander Drive, Mail

Code C539-04, Research Triangle Park, NC 27709; telephone number: (919) 541-1062; email address: beaver.melinda@epa.gov.

SUPPLEMENTARY INFORMATION:

Regulated Entities. Entities regulated under CSAPR are fossil fuel-fired boilers and stationary combustion turbines that serve generators producing electricity for sale, including combined cycle units and units operating as part of systems that cogenerate electricity and other useful energy output. Regulated categories and entities include:

Category	NAICS* Code	Examples of potentially regulated industries
Industry	221112	Fossil fuel-fired electric power generation

* North American Industry Classification System

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated. To determine whether your facility is affected by this action, you should carefully examine the applicability provisions in 40 CFR 97.404 and 97.704. If you have questions regarding the applicability of CSAPR to a particular entity, consult the person listed in the FOR FURTHER INFORMATION CONTACT section above.

Table of Contents

I. Overview

The EPA promulgated CSAPR in 2011 in order to address the obligations of states – and of the EPA when states have not met their obligations – under CAA section 110(a)(2)(D)(i)(I) to prohibit air pollution contributing significantly to nonattainment in, or interfering with maintenance by, any other state with regard to several NAAQS, including the 1997 annual $PM_{2.5}$ NAAQS.[1] To address Texas' transport obligation under CAA section 110(a)(2)(D)(i)(I) with regard to this NAAQS, CSAPR established FIP requirements for affected EGUs in Texas, including statewide emissions budgets that apply to the EGUs' collective annual emissions of SO_2 and NO_X.

In 2012, the EPA promulgated an amendment to the Regional Haze Rule allowing a state whose EGUs participate in one of the CSAPR trading programs for a given pollutant to rely on its sources' participation in CSAPR as an alternative to source-specific BART requirements – the so-called CSAPR-better-than-BART rule, codified at 40 CFR 51.308(e)(4).[2] This rule relied on a regional analytic demonstration that included an air quality modeling analysis comparing the projected visibility impacts of CSAPR implementation and BART implementation. To project

---

[1] Federal Implementation Plans; Interstate Transport of Fine Particulate Matter and Ozone and Correction of SIP Approvals, 76 FR 48208 (August 8, 2011).

[2] Regional Haze: Revisions to Provisions Governing Alternatives to Source-Specific Best Available Retrofit Technology (BART) Determinations, Limited SIP Disapprovals, and Federal Implementation Plans, 77 FR 33642 (June 7, 2012).

emissions under CSAPR, the EPA assumed that the geographic scope and state emissions budgets for CSAPR would be implemented as finalized and amended in 2011 and 2012.[3]

In July 2015, the D.C. Circuit issued a decision on a range of challenges to CSAPR in *EME Homer City Generation, L.P. v. EPA (EME Homer City II),* denying most claims but remanding several CSAPR emissions budgets to the EPA for reconsideration, including the Phase 2 SO_2 budget for Texas.[4] Because the remand created the potential for changes in the geographic scope and stringency of CSAPR as evaluated for purposes of the 2012 comparison to BART implementation, the EPA recognizes that how the Agency addresses the remand could raise questions as to whether states and the EPA should continue to rely on the CSAPR-better-than-BART rule.

The EPA issued a proposal to address the remand of the Texas Phase 2 SO_2 budget and to resolve any questions about continued reliance on the CSAPR-better-than-BART rule on November 3, 2016, and solicited comment on the proposal.[5] Four commenters provided substantive comments, and this final rule takes those comments into consideration. The

---

[3] CSAPR was amended three times in 2011 and 2012 to add five states to the seasonal NO_X program and to increase certain state budgets. 76 FR 80760 (December 27, 2011); 77 FR 10324 (February 21, 2012); 77 FR 34830 (June 12, 2012). The CSAPR-better-than-BART final rule reflected consideration of these changes to CSAPR.

[4] *EME Homer City Generation, L.P. v. EPA (EME Homer City II)*, 795 F.3d 118, 138 (D.C. Cir. 2015). The court also remanded the Phase 2 SO_2 budgets for three other states and the Phase 2 seasonal NO_X budgets for eleven states, including Texas. *Id.*

[5] Interstate Transport of Fine Particulate Matter: Revision of Federal Implementation Plan Requirements for Texas, Proposed Rule, 81 FR 78954 (November 10, 2016).

Agency's responses to the principal comments are provided below. The remaining comments are addressed in the Response to Comments document available in the docket for this action.

In this final action, as proposed, the EPA is withdrawing the FIP provisions requiring Texas EGUs to participate in the CSAPR SO_2 Group 2 Trading Program and the CSAPR NO_X Annual Trading Program during Phase 2 of these programs, which began with 2017 emissions.[6] Removal of Texas EGUs from Phase 2 of these CSAPR trading programs renders it necessary to evaluate whether EPA should use other means to address any remaining transport obligation for Texas under CAA section 110(a)(2)(D)(i)(I) with regard to the 1997 annual $PM_{2.5}$ NAAQS. However, the EPA is finalizing its proposed determination that Texas does not have any such remaining 1997 annual $PM_{2.5}$ NAAQS transport obligation as of the beginning of Phase 2 of the CSAPR trading programs for SO_2 and annual NO_X. Accordingly, the EPA is also determining that the Agency has no obligation to issue new FIP requirements for Texas sources to address transported $PM_{2.5}$ pollution under CAA section 110(a)(2)(D)(i)(I) with regard to this NAAQS.

Also in this action, the EPA is concluding, based on consideration of the sensitivity analysis included in the proposal and additional analysis included in this final action, that the 2012 analytic demonstration supporting the conclusion that CSAPR participation qualifies as a BART alternative is not adversely affected by the actions being taken to respond to the D.C. Circuit's

[6] With regard to each of the other remanded budgets, the EPA either has already withdrawn or expects to withdraw the FIP provisions requiring the EGUs in the affected states to participate in the corresponding CSAPR federal trading programs in Phase 2 through other actions, as discussed in section III below.

remand of CSAPR Phase 2 budgets.[7] As a result, no revisions are needed to the CSAPR-better-than-BART rule.

At the same time, however, because Texas EGUs will no longer participate in a CSAPR SO_2 trading program, Texas will no longer be eligible to rely on CSAPR participation as an alternative to the application of source-specific SO_2 BART for its BART-eligible EGUs under 40 CFR 51.308(e)(4). That obligation and any other remaining regional haze obligations for Texas are not addressed in this action and will need to be addressed through other actions as appropriate.[8]

This final rule is effective immediately upon publication in the *Federal Register*. As discussed in section VI.L below, the EPA is issuing this rule under CAA section 307(d). While Administrative Procedure Act (APA) section 553(d)[9] generally provides that rules may not take effect earlier than 30 days after they are published in the *Federal Register*, CAA section 307(d)(1) clarifies that "[t]he provisions of [APA] section 553 ... shall not, except as expressly provided in this

---

[7] In addition to this action, the full set of actions being taken to respond to the remand includes the 2016 CSAPR Update withdrawing the remanded seasonal NO_X budgets for eleven states and establishing new seasonal NO_X budgets to address a more recent ozone NAAQS for eight of those states, the action approving Alabama's SIP revision establishing state CSAPR trading programs for SO_2 and annual NO_X to replace the corresponding federal CSAPR trading programs, and the expected actions to approve proposed SIP revisions for Georgia and South Carolina comparable to Alabama's SIP revision (see notes 14, 53, and 57 below). These additional actions are described in more detail in sections II.A and III.D below.

[8] The EPA notes that under 40 CFR 51.308(e)(4), CSAPR implementation is available as a NO_X BART alternative for a state whose EGUs are subject to CSAPR requirements for either annual NO_X or seasonal NO_X emissions. *See* 77 FR at 33652. Texas EGUs continue to participate in a CSAPR trading program for seasonal NO_X. In a separate proposed action, the EPA has proposed to address NO_X BART for Texas EGUs through reliance on participation in CSAPR as a NO_X BART alternative. 82 FR 917 (January 4, 2017).

[9] 5 U.S.C. 553(d).

section, apply to actions to which this subsection applies." Thus, APA section 553(d) does not apply to this rule. Nevertheless, in making this rule effective immediately upon publication, the EPA has considered the purposes underlying APA section 553(d). The primary purpose of the prescribed 30-day waiting period is to give affected parties a reasonable time to adjust their behavior and prepare before a final rule takes effect. This rule does not impose any new regulatory requirements and therefore does not necessitate time for affected sources to adjust their behavior or otherwise prepare for implementation. Further, APA section 553(d) expressly allows an effective date less than 30 days after publication for a rule that "grants or recognizes an exemption or relieves a restriction." This rule relieves Texas EGUs of certain FIP requirements that would otherwise apply. Consequently, making this rule effective immediately upon publication is consistent with the purposes of APA section 553(d).

II. Background

A. History and Summary of CSAPR

The EPA initially promulgated CSAPR in 2011 to address the obligations of states – and of the EPA when states have not met their obligations – under CAA section 110(a)(2)(D)(i)(I), often referred to as the "good neighbor" provision, to prohibit transported air pollution contributing significantly to nonattainment in, or interfering with maintenance by, any other state with regard to the 1997 annual $PM_{2.5}$ NAAQS, the 2006 24-hour $PM_{2.5}$ NAAQS, and the 1997 8-hour ozone NAAQS.[10] To reduce transported $PM_{2.5}$ pollution, CSAPR sets limits on annual emissions of NO_X and SO_2 as precursors to $PM_{2.5}$. To reduce transported ozone pollution during the May-

[10] *See generally* 76 FR 48208.

September ozone season, CSAPR sets limits on seasonal emissions of NO_X as a precursor to ozone. The CSAPR requirements were initially established in FIPs, but states can voluntarily replace the CSAPR FIPs with CSAPR state implementation plans (SIPs) that include equally stringent budgets.[11] Upon approval of such a CSAPR SIP, the corresponding CSAPR FIP is automatically withdrawn.[12]

As explained in the proposal, a number of petitioners challenged CSAPR, and in 2015 the D.C. Circuit issued a decision remanding the Phase 2 SO_2 emissions budgets for Alabama, Georgia, South Carolina, and Texas and the Phase 2 seasonal NO_X budgets for eleven states to the EPA for reconsideration.[13] In response to the remand of the Phase 2 SO_2 emissions budgets, the EPA has engaged the affected states to determine appropriate next steps to address the decision with regard to each state. As discussed in the proposal and also in section III below, the EPA expects that EGUs in Alabama, Georgia, and South Carolina will continue to participate in CSAPR trading programs for SO_2 and annual NO_X pursuant to approved SIP revisions (with equally stringent emissions budgets), making Texas the only state whose EGUs will no longer participate in these programs to reduce transported $PM_{2.5}$ pollution as a result of actions taken to address the remand.

Also as explained in the proposal, in the CSAPR Update rule issued in 2016, the EPA responded to the remand of eleven states' original Phase 2 seasonal NO_X budgets (which had

---

[11] *E.g.,* 40 CFR 52.39(i).

[12] *E.g.,* 40 CFR 52.39(j).

[13] *EME Homer City II*, 795 F.3d at 138.

been established to address transport obligations with regard to the 1997 8-hour ozone NAAQS) by withdrawing the FIP provisions requiring EGUs to comply with those budgets for emissions after 2016.[14] The EPA determined that none of those eleven states has a remaining transport obligation under CAA section 110(a)(2)(D)(i)(I) with regard to the 1997 8-hour ozone NAAQS, but for eight of those states, including Texas, the CSAPR Update rule also established new budgets to address transport obligations with regard to the more stringent 2008 8-hour ozone NAAQS.[15] EGUs in the three states with remanded Phase 2 seasonal NO_X budgets for which the EPA did not establish new budgets – Florida, North Carolina, and South Carolina – are no longer required to participate in a CSAPR trading program for seasonal NO_X emissions to address ozone transport obligations after 2016. However, because EGUs in North Carolina and South Carolina[16] are expected to continue to participate in a CSAPR trading program for annual NO_X emissions in order to address $PM_{2.5}$-related transport obligations, Florida is expected to be the only state originally covered by CSAPR for NO_X emissions for which all such coverage is ending as a result of the EPA's set of actions to address the remand.[17]

---

[14] Cross-State Air Pollution Rule Update for the 2008 Ozone NAAQS (CSAPR Update), 81 FR 74504, 74576 (October 26, 2016).

[15] *Id*. at 74524.

[16] North Carolina EGUs remain subject to FIP provisions requiring participation in a CSAPR trading program for annual NO_X emissions. The EPA's expectation that South Carolina EGUs will continue to participate in a CSAPR program for annual NO_X emissions is based on South Carolina's submission of a SIP revision that includes such requirements, as discussed in sections III and V below.

[17] For discussion of the EPA's response to the remand of the Florida seasonal NO_X budget, and the assessment of the implications of that response for the CSAPR-better-than-BART analytical demonstration, *see* 81 FR at 78962.

Prior to this action, Texas EGUs have been subject to CSAPR FIP provisions requiring participation in the CSAPR SO_2 Group 2 Trading Program and the CSAPR NO_X Annual Trading Program. With this action, the EPA is withdrawing the FIP provisions requiring Texas EGUs to participate in these CSAPR federal trading programs. (Although the court's decision specifically remanded only Texas' Phase 2 SO_2 budget, the court's rationale for remanding that budget also implicates Texas' Phase 2 annual NO_X budget because the SO_2 and annual NO_X budgets were developed through an integrated analysis and were promulgated to meet a common $PM_{2.5}$ transport obligation under CAA section 110(a)(2)(D)(i)(I).) This action has no effect on the separate CSAPR requirements applicable to Texas EGUs relating to seasonal NO_X emissions, which, as discussed in the preceding paragraph, were promulgated in the CSAPR Update rule and are not subject to the D.C. Circuit's remand.

B. CSAPR Participation as a BART Alternative

The proposal provides a detailed explanation of the Regional Haze Rule requirements for best available retrofit technology (BART) and the criteria for demonstrating that an alternative measure achieves greater reasonable progress than source-specific BART.[18]

In 2012, the EPA amended the Regional Haze Rule to provide that participation by a state's EGUs in a CSAPR trading program for a given pollutant – either a CSAPR federal trading program implemented through a CSAPR FIP or a CSAPR state trading program implemented through an approved CSAPR SIP revision – qualifies as a BART alternative for those EGUs for that

[18] 81 FR at 78957.

pollutant.[19] In promulgating this CSAPR-better-than-BART rule, the EPA relied on an analytic demonstration of the improvement in visibility from CSAPR implementation relative to BART implementation based on an air quality modeling study.[20] Since the EPA promulgated this amendment, numerous states covered by CSAPR have come to rely on the provision through either SIPs or FIPs.[21] Additionally, many states have submitted or are planning to submit SIPs relying on the CSAPR-better-than-BART rule for BART or visibility transport purposes, or to replace regional haze FIPs with SIPs.

As explained in the proposal, the 2012 analytic demonstration that CSAPR provides for greater reasonable progress than BART included Texas EGUs as subject to CSAPR for SO_2 and annual NO_X (as well as seasonal NO_X) and included Florida EGUs as subject to CSAPR for seasonal NO_X. The EPA recognizes that the treatment of these EGUs in the analysis would have been different if the Florida FIP withdrawal finalized in the CSAPR Update rule and the Texas FIP withdrawal finalized in this action had been known at the time of the demonstration. In order

---

[19] 40 CFR 51.308(e)(4); *see also generally* 77 FR 33642. Legal challenges to the CSAPR-better-than-BART rule from conservation groups and other petitioners are pending. *Utility Air Regulatory Group v. EPA*, No. 12-1342 (D.C. Cir. filed August 6, 2012).

[20] *See* Technical Support Document for Demonstration of the Transport Rule as a BART Alternative, Docket ID No. EPA-HQ-OAR-2011-0729-0014 (December 2011) (2011 CSAPR/BART Technical Support Document), and memo entitled "Sensitivity Analysis Accounting for Increases in Texas and Georgia Transport Rule State Emissions Budgets," Docket ID No. EPA-HQ-OAR-2011-0729-0323 (May 29, 2012), both available in the docket for this action.

[21] The EPA has promulgated FIPs relying on CSAPR participation for BART purposes for Georgia, Indiana, Iowa, Kentucky, Michigan, Missouri, Ohio, Pennsylvania, South Carolina, Tennessee, Virginia, and West Virginia, 77 FR at 33654, and Nebraska, 77 FR 40150, 40151 (July 6, 2012). The EPA has approved SIPs relying on CSAPR participation for BART purposes for Minnesota, 77 FR 34801, 34806 (June 12, 2012), and Wisconsin, 77 FR 46952, 46959 (August 7, 2012).

to address any potential concern about continuing to rely on CSAPR participation as a BART alternative for EGUs in the remaining CSAPR states, in the proposal for this action the EPA provided a sensitivity analysis explicitly addressing the potential effect on that demonstration of the removal of Texas and Florida EGUs from the relevant CSAPR trading programs in response to the D.C. Circuit's remand. As discussed in section IV, the sensitivity analysis indicates clearly that the demonstration remains valid despite these changes in CSAPR's geographic scope, supporting the continued validity of EPA's 2012 conclusion that CSAPR participation meets the Regional Haze Rule's criteria for a BART alternative.[22] Consequently, in this action the EPA is affirming the current Regional Haze Rule provision at 40 CFR 51.308(e)(4) authorizing the use of CSAPR participation as a BART alternative for BART-eligible EGUs for a given pollutant in states whose EGUs continue to participate in a CSAPR trading program for that pollutant.

[22] With respect to each of the remanded budgets, the EPA has responded or expects to respond to the remand by withdrawing the FIP provisions requiring compliance with the remanded budget. Thus, all changes to CSAPR arising directly from the Agency's response to the remand are changes in CSAPR's geographic scope rather than changes in the stringency of state budgets. Although the EPA has also promulgated new CSAPR seasonal NO_X budgets for 22 states (including eight states with remanded seasonal NO_X budgets) in order to address a more stringent NAAQS, *see generally* 81 FR 74504, for purposes of the sensitivity analysis the EPA has conservatively not considered the generally increased stringency of the new seasonal NO_X budgets, but the EPA did consider the changes in CSAPR's geographic scope – that is, the fact that the remaining three states with remanded seasonal NO_X budgets will no longer participate in CSAPR for seasonal NO_X.

III. Withdrawal of CSAPR FIP Requirements Related to Texas' Transport Obligations with Regard to the 1997 Annual $PM_{2.5}$ NAAQS

A. Summary

In this action, as proposed, the EPA is responding to the remand of the CSAPR Phase 2 SO_2 budget for Texas by withdrawing the FIP provisions requiring Texas EGUs to participate in the CSAPR SO_2 Group 2 Trading Program and the CSAPR NO_X Annual Trading Program with regard to emissions during Phase 2 of those programs, which began in 2017. In *EME Homer City II*, the court remanded the CSAPR Phase 2 SO_2 budget for Texas to the EPA for reconsideration on the grounds that the budget may be more stringent than necessary to address the state's obligation under CAA section 110(a)(2)(D)(i)(I) to reduce transported pollution with respect to the 1997 annual $PM_{2.5}$ NAAQS.[23] Upon review of options for responding to the remand, the EPA has determined, for the reasons discussed in this section, that withdrawal of the FIP provisions identified above, rather than issuance of revised FIP provisions for Texas with a higher (i.e., less stringent) Phase 2 SO_2 budget as advocated by some commenters, is the appropriate response. Withdrawal of the FIP provisions related to the CSAPR SO_2 trading program encompasses withdrawal of the requirement for Texas EGUs to comply with the remanded Phase 2 SO_2 budget, thereby addressing the specific rule provision remanded by the court. The EPA is withdrawing the FIP provisions related to annual NO_X (in addition to the requirements related to SO_2) because the CSAPR FIP requirements for SO_2 and annual NO_X were determined through

[23] 795 F.3d at 128-29. A more detailed discussion of how the EPA established the CSAPR Phase 2 SO_2 budget for Texas and why the court found the budget invalid is included in the proposal for this action. 81 FR at 78958.

an integrated analysis and were promulgated in combination to remedy covered states' $PM_{2.5}$ transport obligations; the court's finding that CSAPR's Phase 2 requirements may be more stringent than necessary to address Texas' $PM_{2.5}$ transport obligation therefore implicates the state's Phase 2 budgets for both SO_2 and annual NO_X.

Withdrawal of the previous CSAPR FIP requirements revives the need to consider Texas' transport obligation under CAA section 110(a)(2)(D)(i)(I) with regard to the 1997 annual $PM_{2.5}$ NAAQS and to address any remaining obligation through other means. However, as proposed, the Agency is further determining that Texas has no remaining transport obligation under this CAA provision with regard to this NAAQS following withdrawal of the previous FIP requirements, and consequently is also determining that the EPA has no obligation to issue new FIP requirements as to Texas's transport obligation under CAA section 110(a)(2)(D)(i)(I) with regard to the 1997 annual $PM_{2.5}$ NAAQS.

In the CSAPR final rule, the EPA determined that 23 states, including Texas, had transport obligations with regard to the 1997 annual $PM_{2.5}$ NAAQS, the 2006 24-hour $PM_{2.5}$ NAAQS, or both, and established SO_2 and annual NO_X emissions budgets for each of the states.[24] The budgets were implemented through FIP provisions requiring the affected EGUs in each covered state to participate in CSAPR allowance trading programs. In the case of Texas, the $PM_{2.5}$-

[24] The EPA also determined in CSAPR and a related supplemental rule that 25 states, including Texas, had transport obligations with regard to the 1997 8-hour ozone NAAQS. In all, 28 states were determined to have transport obligations related to either $PM_{2.5}$, ozone, or both. The EPA's process for determining states' emissions limitations under CSAPR and the associated CSAPR FIP requirements is described at length in the preamble to the CSAPR final rule. *See generally* 77 FR at 48222-71.

related FIP requirements were imposed based solely on the state's transport obligations with regard to the 1997 annual $PM_{2.5}$ NAAQS.[25]

Following issuance of the D.C. Circuit's decision in *EME Homer City II* remanding the CSAPR Phase 2 SO_2 budget for Texas, the EPA reevaluated its earlier conclusions regarding Texas' $PM_{2.5}$ transport obligations by reexamining the data in the final CSAPR record in light of the D.C. Circuit's holdings in the decision, including the holdings regarding the CSAPR Phase 2 seasonal NO_X budgets for several states, as explained in the proposal.[26] The final CSAPR record contained "base case" modeling projections of air quality at monitoring locations throughout the country both for 2012, the intended start year of Phase 1 of the CSAPR trading programs, and for 2014, the intended start year of Phase 2 of the programs. The base case projections were designed to represent projected air quality at these monitoring locations without any emission reductions from CSAPR. In the CSAPR rulemaking, the EPA used the 2012 base case air quality projections for purposes of identifying ozone receptors projected to have air quality problems and determining states that were linked to those receptors and that therefore might have transport obligations under both Phase 1 and Phase 2 of the CSAPR trading programs. However, in *EME Homer City II*, the D.C. Circuit agreed with petitioners[27] that the EPA should also have

---

[25] As noted in the proposal and further discussed below, the modeling for the CSAPR final rule also linked Texas to a downwind air quality problem with regard to the 2006 24-hour $PM_{2.5}$ NAAQS, but the EPA did not rely on the linkage with regard to that NAAQS as a basis for establishing CSAPR FIP requirements for Texas EGUs. 81 FR at 78960 n.42; *see also* 76 FR at 48243, 48214.

[26] 81 FR at 78960.

[27] *See* Opening Brief of Industry and Labor Petitioners on Remand 8, 14, *EME Homer City Generation, L.P. v. EPA*, No. 11-1302 (D.C. Cir. filed December 10, 2014).

considered the 2014 base case air quality projections for these purposes, and that in instances of receptors where the 2014 base case projections did not show air quality problems, the EPA lacked authority to require any emission reductions in Phase 2 of the CSAPR trading programs based on linkages to those receptors only occurring in Phase 1 of the programs. On these grounds, the court found that EPA lacked authority to establish Phase 2 seasonal NO_X emission limitations for EGUs in ten states linked solely to ozone receptors whose 2014 air quality projections did not show air quality problems.[28]

While not discussed in the court's decision, the projections of 2014 air quality for a $PM_{2.5}$ receptor in Madison County, Illinois (the only $PM_{2.5}$ receptor with projected air quality problems to which Texas was linked) in the final CSAPR record are analogous to the 2014 air quality projections for the ozone receptors described above, in that the air quality problems at the Madison County receptor were projected to be resolved in 2014 before any emission reductions from CSAPR. In light of the court's holding as to the legal import of the 2014 base case air quality projections for the ozone receptors described above, the EPA considered the legal import of the analogous 2014 base case air quality projections for the Madison County $PM_{2.5}$ receptor with respect to Texas' $PM_{2.5}$-related obligations under CSAPR. There are three relevant record data elements. First, the record indicates that the only $PM_{2.5}$ receptor to which Texas is linked for purposes of determining possible obligations under the good neighbor provision is the receptor in Madison County, Illinois.[29] Second, the projected maximum design

---

[28] *EME Homer City II*, 795 F.3d at 129-30. The court also remanded the Phase 2 seasonal NO_X budget for an eleventh state (Texas), but on different grounds.

[29] *See* 76 FR at 48241, tables V.D-2 and V.D-3.

value[30] for annual $PM_{2.5}$ at the Madison County receptor is 15.02 micrograms per cubic meter ($\mu g/m^3$) in the 2014 base case.[31] Finally, the value that the EPA used to determine whether a particular $PM_{2.5}$ receptor should be identified as having air quality problems that may trigger transport obligations with regard to the 1997 annual $PM_{2.5}$ NAAQS is 15.05 $\mu g/m^3$, which is higher than the Madison County maximum design value in the 2014 base case.[32] Thus, the reevaluation of the final CSAPR record in light of the D.C. Circuit's holding indicates that the record does not support a finding of a transport obligation for Texas under CAA section 110(a)(2)(D)(i)(I) with regard to this NAAQS as of the beginning of Phase 2 of the CSAPR trading programs for SO_2 and annual NO_X, and the Agency accordingly finds that the state's obligation is resolved without a need for further emission reductions, including the emission reductions from CSAPR. The finding that Texas's transport obligation with regard to this NAAQS is resolved as of the start of Phase 2 of the CSAPR trading programs without the need for any emission reductions from CSAPR removes the EPA's authority to issue new FIP requirements for purposes of responding to the court's remand of the state's CSAPR Phase 2 SO_2 budget. The

---

[30] The EPA independently considered linkages to "nonattainment" and "maintenance" receptors. If both the projected average design value and the projected maximum design values for a receptor were above the triggering threshold, the receptor was considered a nonattainment receptor. If the projected maximum design value was above the triggering threshold but the projected average design value was not, the receptor was considered a maintenance receptor. Thus, if the projected maximum design value was not above the triggering threshold, the receptor was not considered either a nonattainment receptor or a maintenance receptor. *See* 76 FR at 48233.

[31] *See* projected 2014 base case maximum annual $PM_{2.5}$ design value for Madison County, Illinois receptor 171191007 at B-41 of the Air Quality Modeling Final Rule Technical Support Document, Docket ID No. EPA-HQ-OAR-2009-0491-4140 (June 2011) (CSAPR Final Rule Technical Support Document), available in the docket for this action.

[32] 76 FR at 48233.

finding likewise eliminates any obligation of the EPA to issue new FIP requirements addressing a remaining transport obligation of the state with regard to this NAAQS following withdrawal of the existing CSAPR FIP requirements, because the state has no such remaining transport obligation following the withdrawal.

As noted in the proposal, the modeling for the CSAPR final rule also linked Texas to a downwind air quality problem with regard to the 2006 24-hour $PM_{2.5}$ NAAQS, but the EPA did not rely on the linkage with regard to this NAAQS as a basis for establishing CSAPR FIP requirements for Texas EGUs. In the proposal, the EPA indicated that data in the final CSAPR record, reevaluated in light of *EME Homer City II*, would show that Texas no longer has a transport obligation with regard to the 2006 24-hour $PM_{2.5}$ NAAQS as of the beginning of Phase 2 of the CSAPR trading programs for SO_2 and annual NO_X, but that because Texas was not subject to CSAPR requirements with regard to this NAAQS, the EPA was not proposing to make a determination in this action as to any obligation of Texas with regard to this NAAQS. Nevertheless, because commenters raise the 2006 24-hour $PM_{2.5}$ NAAQS in their comments, the EPA will explain how the court's reasoning would apply with respect to the data for this NAAQS. The analysis for the 2006 24-hour $PM_{2.5}$ NAAQS is essentially identical to the analysis described above with regard to the 1997 annual $PM_{2.5}$ NAAQS. Specifically, the Madison County receptor is the only $PM_{2.5}$ receptor to which Texas was linked for this NAAQS;[33] the projected maximum design value for 24-hour $PM_{2.5}$ at the Madison County receptor is 35.3 $\mu g/m^3$ in the

[33] *See* 76 FR at 48242-44, tables V.D-5 and V.D-6.

2014 base case;[34] and the value that the EPA used to determine whether a particular $PM_{2.5}$ receptor should be identified as having air quality problems that may trigger transport obligations with regard to the 2006 24-hour $PM_{2.5}$ NAAQS is 35.5 $\mu g/m^3$, which is higher than the Madison County maximum design value in the 2014 base case.[35] Thus, the reevaluation of the final CSAPR record in light of the D.C. Circuit's holding also indicates that the record would not support a finding of a transport obligation for Texas with regard to the 2006 24-hour $PM_{2.5}$ NAAQS as of the beginning of Phase 2 of the CSAPR trading programs for SO_2 and annual NO_X.

Overall, on the subject of the proposed withdrawal of the FIP provisions and the proposed finding that Texas will no longer have a transport obligation following withdrawal of the FIP provisions, the EPA received substantive comments from two parties.[36] The remainder of this section summarizes these commenters' principal comments on this topic and provides the Agency's response.

B. Adequacy of Rationale for Finding No Remaining Transport Obligation

The commenters state that the Agency's explanation for the proposed finding that Texas no longer has a transport obligation under CAA section 110(a)(2)(D)(i)(I) with regard to the 1997 annual $PM_{2.5}$ NAAQS as of the beginning of Phase 2 of the CSAPR trading programs for SO_2 and annual NO_X is inadequate or confusing, and that the Agency must provide additional

---

[34] *See* projected 2014 base case maximum 24-hour $PM_{2.5}$ design value for Madison County, Illinois receptor 171191007 at B-70 of the CSAPR Final Rule Technical Support Document, available in the docket for this action.

[35] 76 FR at 48234-35.

[36] A third commenter states without further elaboration that it does not oppose the FIP withdrawal.

explanation for changing its position on the continued existence of a Texas transport obligation from the contrary position taken by the Agency when promulgating the CSAPR final rule.

The EPA disagrees with these comments. The proposal contained a complete explanation of the Agency's basis for this finding, including all necessary supporting data and documentation.[37] As fully explained in the proposal and reiterated above, the Agency's change in position as to Texas' transport obligation between the CSAPR final rule and this action is readily attributable to the D.C. Circuit's holding in *EME Homer City II* with regard to the legal import of the 2014 base case air quality projections in the final CSAPR record. The court's holding clarifies the legal standard the Agency should have used when considering the information in the final CSAPR record, which includes those air quality projections.

C. Responsiveness to the D.C. Circuit's Remand Instructions

The commenters assert that withdrawal of the remanded Texas SO_2 budget without issuance of a presumably less stringent replacement budget is not responsive to the D.C. Circuit's remand instructions. According to the commenters, the court directed the EPA to develop a revised CSAPR FIP SO_2 budget for Texas EGUs that does not over-control, and the EPA must either do so or, alternatively, must allow Texas to submit a CSAPR SIP with a higher SO_2 budget. The commenters' argument is intended to provide a continued basis for reliance on CSAPR participation as an SO_2 BART alternative for Texas EGUs. Underlying the commenters' arguments is an apparent belief that a revised, higher CSAPR budget, whether issued through a FIP or approved through a SIP, would automatically enable Texas to rely on CSAPR participation

[37] 81 FR at 78960.

as an alternative to source-specific SO_2 BART requirements for the state's EGUs under 40 CFR 51.308(e)(4).

The EPA disagrees with these comments. As an initial matter, the D.C. Circuit in fact did not direct the Agency to develop replacement budgets for the Texas SO_2 budget or any of the other remanded CSAPR Phase 2 budgets. Rather, the court found that certain budgets were invalid and remanded to the EPA to "reconsider" them,[38] a general instruction that encompasses a range of possible Agency actions upon reconsideration. The commenters cite no statement from the court's opinion that requires the establishment of replacement budgets, but assert that such a requirement must be inferred from the court's other statements or determinations. For example, the commenters suggest that because the court remanded the budgets without vacatur instead of vacating the budgets outright, the court must have intended for the Agency to replace rather than simply withdraw the budgets. However, the court actually provided a different rationale for remanding without vacatur, including the statement that "some good neighbor obligations *may* be appropriate for *some* of the relevant states."[39] The reference to "some" of the states indicates that the court considered it likely that replacement budgets would not be established in *every* instance, and the use of the word "may" indicates that the court considered it possible that replacement budgets would not be established in *any* instance. Thus, contrary to the commenters' claims, the court's opinion clearly affords the Agency the discretion to determine the appropriate response to the remand and does not prevent the Agency from determining upon reconsideration that the program is no longer

[38] *EME Homer City II*, 795 F.3d at 124, 138.

[39] *Id.* at 132 (emphasis added).

needed for a particular state with respect to a particular pollutant and consequently not establishing a replacement budget.

The commenters make several additional arguments in support of their contention that the FIP withdrawal is not responsive to the D.C. Circuit's instructions. One commenter asserts that because the court stated that the Agency could consider new information in responding to the remand, the court must have intended for the Agency's response to involve the establishment of replacement budgets. This claim is a *non sequitur* – the court's acknowledgement that additional information may be considered says nothing about what the Agency may or must conclude from consideration of that information. The same commenter also asserts that the Agency may not rely on lack of FIP authority as the basis for not establishing a revised budget because lack of FIP authority was not the basis cited by the court for remanding the budget. This claim is also a *non sequitur* – the Agency lacks authority to issue a revised budget and therefore may not do so, regardless of what additional defects the court may have cited in ordering the remand.

The other commenter asserts that the FIP withdrawal would disrupt allowance markets, contrary to the concern expressed by the D.C. Circuit that outright vacatur, rather than remand without vacatur, could have that impact. While the EPA agrees with the concern expressed by the court and the commenter regarding the potentially disruptive effects of outright vacatur on allowance markets, the Agency does not agree that the court's concern regarding unintended consequences of a judicial vacatur provides a basis for not taking final action at this time to withdraw the Texas FIP requirements, for two reasons. First, the EPA believes that the court did not intend for its expression of concern to constrain the Agency's range of possible responses

to the remand. As discussed above, it is clear from the opinion that the court anticipated the possibility that upon reconsideration the EPA would determine that some, or even all, of the remanded budgets should be withdrawn and not replaced. Second, in this instance, emissions data reported by the EGUs covered by the CSAPR trading programs for SO_2 and annual NO_X demonstrate that withdrawal of the FIP provisions requiring Texas EGUs to participate in these programs will not cause allowance market disruption for the programs' remaining participants. Under both programs, the totals of the emissions reported by participating EGUs for both 2015 and 2016 in states other than Texas were less than the sums of the Phase 2 emissions budgets for these other states.[40] Likewise, under both programs the totals of the emissions reported by Texas EGUs for both 2015 and 2016 were less than the Texas Phase 2 budgets.[41] The elimination from the programs of Texas EGUs and the allowances allocated to Texas EGUs is therefore not expected to cause either shortages of allowances available for purchase by EGUs in the other states or the loss of an important market for sale of surplus allowances by EGUs in the other states. In these circumstances, the EPA anticipates that the FIP withdrawal will have little impact on the allowance market in either trading program.

With regard to the two commenters' preferred response to the remand – that the EPA establish a revised, less stringent SO_2 budget for Texas EGUs and implement that budget through a revised FIP – such an action is infeasible because the Agency lacks the necessary legal authority. In this action, the EPA is finalizing the proposed finding that Texas no longer has a

---

[40] *See* "2015-2016 Compliance Summary for CSAPR SO_2 Group 2 and NO_X Annual Trading Programs," available in the docket for this action.

[41] *Id.*

transport obligation under CAA section 110(a)(2)(D)(i)(I) for the 1997 annual $PM_{2.5}$ NAAQS. That finding addresses the deficiency in the Texas SIP that was the basis for issuance of the withdrawn FIP requirements and, therefore, because there is no longer a deficiency, the Agency no longer has authority to issue revised FIP requirements.[42] The reasons for the finding are discussed above and were discussed at length in the proposal.[43]

With regard to the commenters' suggested alternative response to the remand – that the EPA allow Texas to submit a CSAPR SIP with a higher SO_2 budget in order to allow the state to rely on CSAPR participation as an SO_2 BART alternative even if the state's EGUs are no longer subject to a CSAPR FIP SO_2 budget – the comment is not properly directed to the EPA, because Texas has not expressed interest in submitting a CSAPR SIP.[44] Moreover, even if consideration of Texas' BART obligations were relevant for our action on remand, reliance on CSAPR participation with a higher budget would not automatically qualify as an SO_2 BART alternative under the terms of the CSAPR-better-than-BART rule. That rule allows a state to rely on its EGUs' participation in a CSAPR SIP trading program only if the EPA approves the SIP as "meeting the requirements of" the CSAPR regulations at 40 CFR 52.38 and 52.39.[45] As relevant here, the CSAPR regulations at § 52.39 expressly preclude a state's SO_2 emissions budget from exceeding the SO_2 emissions budget established under the CSAPR FIP trading program that the CSAPR SIP

---

[42] *See* CAA section 110(c).

[43] 81 FR at 78960.

[44] Texas did not submit comments on the proposal for this action.

[45] 40 CFR 51.308(e)(4).

trading program would replace.[46] Thus, even if the D.C. Circuit's remand could serve as a basis for the EPA to approve a SIP revision that does not satisfy § 52.39 on the grounds that the state's transport obligations can be addressed by a less stringent budget, the CSAPR-better-than-BART rule at 40 CFR 51.308(e)(4) would not be satisfied. A SIP approved on such a basis could in theory provide a mechanism for Texas EGUs to participate in CSAPR with a higher SO_2 budget than the remanded FIP budget despite the Agency's lack of authority to set a revised SO_2 budget through a revised FIP. However, because of the increased SO_2 budget, such a SIP would not "meet[] the requirements of ... § 52.39" and therefore would not allow the state to rely on its EGUs' participation in the CSAPR SIP trading program as an alternative to source-specific BART for SO_2.[47]

D. Consistency of Responses to Remand Across States

One commenter states that by withdrawing the FIP requirements the EPA is arbitrarily singling Texas out as the only state with a remanded CSAPR budget whose EGUs will lose the

---

[46] 40 CFR 52.39(i)(1)(i).

[47] To the extent the commenters are suggesting that the D.C. Circuit's holdings in *EME Homer City II* require the Agency to find that a SIP with a revised, higher SO_2 budget would somehow satisfy the CSAPR-better-than-BART rule despite its plain language, the Agency disagrees. The court held that the remanded budgets may over-control relative to the states' transport obligations, but did not determine that the budgets are more stringent than necessary to serve as an alternative to source-specific BART. Further, the CSAPR-better-than-BART rule rests on an evaluation of the projected visibility impacts from CSAPR implementation assuming the final CSAPR Phase 2 budget stringencies (including the 2012 CSAPR budget revisions, which were accounted for in the analysis for the final CSAPR-better-than-BART rule). Given this, continuing to enforce the CSAPR-better-than-BART rule's requirement that a state's participation in CSAPR through a SIP must "meet[] the requirements of ... § 52.39" – including the requirement for a state budget no less stringent than was analyzed for purposes of promulgating the rule – is entirely reasonable.

ability to rely on CSAPR participation as a BART alternative. The commenter further asserts that the Agency's "sole purpose" in withdrawing the FIP requirements is to facilitate the imposition of source-specific SO_2 BART requirements on Texas EGUs through a different action.

The EPA disagrees with these comments, which are entirely contrary to the record. First, on the question of uniform application of the CSAPR-better-than-BART regulations, no state whose EGUs do not participate in a CSAPR trading program for a given pollutant can rely on CSAPR participation as a BART alternative for that pollutant. In response to the D.C. Circuit's remand of CSAPR Phase 2 budgets, the EPA has withdrawn or expects to withdraw all fifteen remanded budgets. As explained in the proposal, in thirteen instances, the state will retain eligibility to rely on the CSAPR-better-than-BART rule for the pollutant in question through either the EPA's establishment of a new CSAPR budget to address a more stringent NAAQS (eight seasonal NO_X budgets), the state's sources' continued participation in a different CSAPR trading program for the same pollutant (two seasonal NO_X budgets), or the state's voluntary adoption in a SIP revision of a CSAPR state budget as stringent as the remanded CSAPR FIP budget (three SO_2 budgets).[48] In the remaining two instances where a remanded budget is being withdrawn and none of the three options for preserving eligibility to rely on CSAPR-better-than-BART applies – Texas' SO_2 budget and Florida's seasonal NO_X budget – the state is losing the opportunity to rely on CSAPR participation as a BART alternative for that pollutant.[49] Thus, Texas is being

[48] 71 FR at 78956-57.

[49] As noted in the proposal, 81 FR at 78962, n.55, the EPA has already approved the incorporation into Florida's SIP of determinations regarding source-specific NO_X BART. 77 FR 71111, 71113-14 (November 29, 2012); 78 FR 53250, 53267 (August 29, 2013).

treated the same as every other state with respect to use of the CSAPR-better-than-BART rule.[50]

Second, on the question of the EPA's purpose in withdrawing the FIP requirements, that purpose is to address the court's remand. As explained in the proposal, before initiating this action, the EPA communicated with officials in all four states with remanded SO_2 budgets – Alabama, Georgia, South Carolina, and Texas – regarding the EPA's intent to respond to the remand of the Phase 2 SO_2 budgets by withdrawing the FIP provisions requiring the states' EGUs to participate in the CSAPR federal trading programs for SO_2 and annual NO_X.[51] The EPA explained that each state would lose its ability to rely on CSAPR participation as a BART alternative for SO_2 and/or NO_X if its EGUs no longer participated in the CSAPR trading programs, but that the state could preserve that ability, if desired, by submitting a CSAPR SIP revision replacing the CSAPR federal trading programs with CSAPR state trading programs applying state-established budgets no less stringent than the remanded federally-established budgets

[50] As a further example of the consistent treatment of Texas, the EPA notes that, despite the withdrawal of the Texas FIP requirements relating to annual NO_X emissions, the state will be able to continue to rely on the CSAPR-better-than-BART rule for NO_X as long as the state's EGUs continue to participate in a CSAPR trading program for seasonal NO_X emissions. *See* 81 FR at 78955 n.4 and 78956 n.7.

[51] *See* memo entitled "The U.S. Environmental Protection Agency's Plan for Responding to the Remand of the Cross-State Air Pollution Rule Phase 2 SO_2 Budgets for Alabama, Georgia, South Carolina and Texas" from Janet G. McCabe, EPA Acting Assistant Administrator for Air and Radiation, to EPA Regional Air Division Directors (June 27, 2016), available in the docket for this action. The memo directs the Regional Air Division Directors to share the memo with state officials. The EPA also communicated orally with officials in Alabama, Georgia, South Carolina, and Texas in advance of the memo.

(i.e., budgets consistent with the 2012 CSAPR-better-than-BART analytic demonstration).[52] Alabama, Georgia, and South Carolina indicated their preference to pursue the SIP revision option. The EPA approved Alabama's CSAPR SIP revision in 2016 and, accordingly, the FIP provisions requiring its EGUs to participate in the CSAPR federal trading programs for SO_2 and annual NO_X have been automatically withdrawn.[53] Georgia and South Carolina committed to the EPA in 2016 to submit similar CSAPR SIP revisions by deadlines falling in September 2017 and August 2017, respectively.[54] Georgia has in fact now submitted its SIP to the EPA for approval,[55] South Carolina has submitted its proposed state CSAPR trading program rules and has requested that the EPA begin the SIP approval process under the Agency's parallel

---

[52] Although the D.C. Circuit remanded the states' Phase 2 SO_2 budgets because it determined that the budgets may be more stringent than necessary to address the states' identified $PM_{2.5}$ transport obligations, nothing in the court's decision affects the states' authority to seek incorporation into their SIPs of state-established budgets as stringent as the remanded federally-established budgets or limits the EPA's authority to approve such SIP revisions. *See* CAA sections 116, 110(k)(3).

[53] Air Plan Approval; Alabama; Cross-State Air Pollution Rule, 81 FR 59869 (August 31, 2016).

[54] *See* letters to Heather McTeer Toney, Regional Administrator, EPA Region 4, from Judson H. Turner, Director of the Environmental Protection Division, Georgia Department of Natural Resources (May 26, 2016) and from Myra C. Reece, Director of Environmental Affairs, South Carolina Department of Health and Environmental Control (April 19, 2016), available in the docket for this action. The EPA has conditionally approved the CAA section 110(a)(2)(D)(i)(II) prong 4 visibility element for multiple NAAQS in the Georgia and South Carolina SIPs based on each state's commitment to submit a CSAPR SIP revision. 81 FR 65899, 65900 (September 26, 2016) (Georgia); 81 FR 56512, 56513 (August 22, 2016) (South Carolina). Each state committed to submit its CSAPR SIP revision within one year of the date of the Agency's final conditional approval of the state's prong 4 SIP revision. Failure of a state to meet a commitment serving as the basis for a conditional SIP approval results in automatic conversion of the conditional approval to a disapproval.

[55] *See* letter to V. Anne Heard, Acting Regional Administrator, EPA Region 4, from Richard E. Dunn, Director, Environmental Protection Division, Georgia Department of Natural Resources (July 26, 2017), available in the docket for this action.

processing procedure,[56] and the EPA has proposed to approve both SIP revisions.[57] The CSAPR FIP provisions remain in place for the time being for EGUs in Georgia and South Carolina, and the EPA is not proposing their withdrawal at this time based on the reasonable expectation that such withdrawal will be automatically accomplished as a result of the Agency's action on those states' SIP submittals, just as with Alabama.[58] Because Texas has indicated that it will not submit a CSAPR SIP revision, the EPA is proceeding with this action to withdraw the FIP requirements for Texas EGUs, consistent with the intended approach previously communicated to officials for all four states. Texas has had the same set of options available to all four states with remanded SO_2 budgets and has selected a different option than the other three states.

---

[56] *See* letter to V. Anne Heard, Acting Regional Administrator, EPA Region 4, from Myra C. Reece, Director of Environmental Affairs, South Carolina Department of Health and Environmental Control (May 26, 2017), available in the docket for this action. Under the parallel processing procedure, the EPA works closely with the state agency during regulatory development, and the state submits a copy of its proposed regulations to the EPA before completion of the state's public notice and adoption process. The EPA reviews the proposed state action, prepares a notice of proposed EPA action (approval or disapproval) for publication in the *Federal Register*, and provides public notice concurrently with the state's process. After the state adopts its final regulations and submits its formal SIP revision request, the EPA reviews the SIP submission for changes from proposal and either prepares a notice of final EPA action or, if the state has made significant changes, may re-propose before taking final EPA action. The public comment period on South Carolina's proposed regulations ended on June 26, 2017, and the state expects its final regulations to become effective in August 2017. *Id*.

[57] Air Plan Approval; Georgia; Cross-State Air Pollution Rule, 82 FR 38866 (August 16, 2017); Air Plan Approval; South Carolina; Cross-State Air Pollution Rule, 82 FR 37389 (August 10, 2017).

[58] If the EPA disapproves Georgia's or South Carolina's SIP submittal, the EPA will propose to withdraw the FIP provisions requiring that state's EGUs to participate in the CSAPR federal trading programs for SO_2 and annual NO_X, consistent with the action taken here for Texas EGUs.

E. Consistency of Consideration of D.C. Circuit's Holding Across States

One commenter asserts that the EPA has not analyzed whether other states covered by CSAPR are linked only to receptors for which the 2014 base case projections do not show air quality problems, and that "[b]y not performing that analysis, the EPA is arbitrarily singling Texas out for removal from the CSAPR program."

The EPA disagrees with these comments. With respect to the budgets that were not remanded by the court, the Agency has confirmed for each such budget that the state is linked to at least one receptor for which the base case 2014 air quality projections showed air quality problems. The court's holding as to lack of authority to establish Phase 2 emission reduction requirements for a state in the absence of any linkage to a projected air quality problem in the 2014 base case therefore does not extend to these budgets.[59]

With respect to the remanded budgets, the EPA again rejects the suggestion that Texas is being treated differently than any other state. As noted in the response above to the comments concerning the consistency of the Agency's responses to the remand, the FIP requirements to comply with all the remanded budgets, not just the remanded Texas SO_2 budget, have been withdrawn or are expected to be withdrawn. Further, as discussed above, in the cases of ten of

[59] *See* 76 FR at 48241-44, tables V.D-2, V.D-3, V.D-5, and V.D-6 (annual and 24-hour $PM_{2.5}$ linkages); *id.* at 48246, tables V.D-8 and V.D-9 (ozone linkages); CSAPR Final Rule Technical Support Document at B-35 to B-92 (2014 base case maximum design values for annual and 24-hour $PM_{2.5}$); *id.* at B-4 to B-34 (2014 base case maximum design values for ozone). As discussed above, the relevant triggering values for annual and 24-hour $PM_{2.5}$ are 15.05 $\mu g/m^3$ and 35.5 $\mu g/m^3$, respectively. The relevant triggering value for ozone is 85 parts per billion (ppb). 76 FR at 48236.

the eleven remanded seasonal NO_X budgets, the absence of air quality problems at the relevant receptors in the 2014 base case projections was expressly cited by the court as the basis for remanding the budgets. The EPA's reliance on the court's holding as applied to those states' ozone-related transport obligations with regard to the 1997 8-hour ozone NAAQS is indistinguishable from the EPA's reliance on the same holding as applied to Texas' $PM_{2.5}$-related transport obligations with regard to the 1997 annual $PM_{2.5}$ NAAQS.[60]

F. Potential Use of Texas FIP Budgets to Address a Different $PM_{2.5}$ NAAQS

Finally, the commenters state that the EPA should consider Texas's obligations to address interstate transport with respect to the 2006 24-hour $PM_{2.5}$ NAAQS and/or the 2012 annual $PM_{2.5}$ NAAQS before withdrawing Texas' FIP obligations. As noted in the proposal and discussed above, in the case of Texas, CSAPR FIP obligations related to $PM_{2.5}$ pollution were established with respect to the 1997 annual $PM_{2.5}$ NAAQS only, even though for other states the CSAPR FIPs were based on the states' transport obligations with respect to both the 1997 annual $PM_{2.5}$ NAAQS and the 2006 24-hour $PM_{2.5}$ NAAQS.[61] The commenters assert that failure to consider Texas' potential transport obligations with respect to the 2006 24-hour $PM_{2.5}$ NAAQS now

---

[60] In the case of the last remanded seasonal NO_X budget – for Texas – the court remanded the budget on different grounds, and the EPA subsequently determined through further analysis that the state has no remaining transport obligation under CAA section 110(a)(2)(D)(i)(I) with respect to the 1997 8-hour ozone NAAQS. *See* 81 FR at 74524. In the cases of the remanded SO_2 budgets for Alabama, Georgia, and South Carolina, the states are adopting equally stringent CSAPR SIP budgets to replace the withdrawn FIP budgets in order to preserve the states' options to rely on the CSAPR-better-than-BART rule, thereby rendering moot any questions about the states' remaining transport obligations and EPA's authority or obligation to issue revised FIP budgets to address such transport obligations.

[61] *See* 81 FR at 78960 n.42; *see also* 76 FR at 48213, table III-1.

before withdrawing the FIP obligations would be inconsistent with the manner in which the EPA responded to the D.C. Circuit's remand of seasonal NO_X budgets and inconsistent with data in the CSAPR record that links Texas to downwind air quality problems with respect to the 2006 24-hour $PM_{2.5}$ NAAQS.[62]

The EPA disagrees with this comment for three reasons. First, as noted above, the Agency is responding to the court's remand of all fifteen CSAPR Phase 2 SO_2 and seasonal NO_X budgets in the same way, namely by withdrawing the FIP provisions requiring affected EGUs to comply with the remanded budgets.[63] The differences noted by the commenters are differences only in the actions that are being coordinated with the responses, not differences in the responses themselves.

Second, the differences in the coordinated actions are reasonable given the differences in other regulatory activities being undertaken for the two pollutants. The EPA coordinated the withdrawal of the eleven remanded seasonal NO_X budgets addressing the 1997 8-hour ozone

---

[62] One of the commenters asserts that "under EPA's own theory," the existence of this data in the CSAPR final record mandates that the EPA consider the state's transport obligations with respect to the 2006 24-hour $PM_{2.5}$ NAAQS before withdrawing the FIP requirements. Wrongly attributing this "theory" to the Agency, the commenter ignores other factors the Agency must take into account before promulgating FIP requirements, such as whether a statutory condition establishing FIP authority has been satisfied. In any event, for this final action the Agency has expressly considered (and rejected) the option of leaving the Texas FIP requirements in place to address the state's transport obligations with respect to this NAAQS, as discussed in this section.

[63] As discussed in the proposal, addressing the remanded budgets by withdrawing the FIP requirements is also fully consistent with the manner in which EPA has responded to previous judicial remands regarding obligations of individual states under other EPA rules addressing multiple states' transport obligations. 81 FR at 78959.

NAAQS with the establishment of new budgets for eight of those states addressing the 2008 8-hour ozone NAAQS because a rulemaking to address transported pollution with respect to the 2008 8-hour ozone NAAQS was actively under development at the time of the court's decision.[64] Under this circumstance, such coordination was efficient and fully consistent with the court's expressed intent to minimize market disruption and to continue to address statutory obligations to reduce transported pollution where appropriate. In contrast, no analogous opportunity is available to coordinate withdrawal of the remanded SO_2 budgets with another rulemaking addressing a more recent $PM_{2.5}$ NAAQS because states' transport obligations with respect to the 2006 24-hour $PM_{2.5}$ NAAQS have already been largely addressed through either SIPs or the CSAPR rulemaking, and the Agency has not identified interstate transport problems with respect to the 2012 annual $PM_{2.5}$ NAAQS sufficient to justify a new national rulemaking at this time.

Third, the EPA lacks authority to rely on a transport obligation for Texas with respect to either the 2006 24-hour $PM_{2.5}$ NAAQS or the 2012 annual $PM_{2.5}$ NAAQS as the legal basis to support imposing an SO_2 budget for the state via a FIP. Under CAA section 110(c), the Agency's authority to issue a FIP with respect to a particular state obligation arises either when the Agency finds that a state has failed to submit a required SIP or when the Agency disapproves a submitted SIP. Neither of these predicate events has occurred with regard to Texas' transport

[64] As noted in the proposal, for three of the eleven states with remanded seasonal NO_X budgets addressing the 1997 8-hour ozone NAAQS – Florida, North Carolina, and South Carolina – the EPA found no transport obligations with respect to the 2008 8-hour ozone NAAQS and did not establish seasonal NO_X budgets addressing that NAAQS. 81 FR at 78959.

obligations under either the 2006 24-hour $PM_{2.5}$ NAAQS or the 2012 annual $PM_{2.5}$ NAAQS.[65] Commenters are correct that data in the final CSAPR record, as evaluated by the Agency when CSAPR was promulgated, showed that $PM_{2.5}$ pollution transported from Texas to downwind states exceeded the minimum threshold level used to establish which states might have transport obligations for the 2006 24-hour $PM_{2.5}$ NAAQS. However, as noted in the proposal[66] and discussed above, the 2014 base case air quality projections in the final CSAPR record, when reevaluated in light of the D.C. Circuit's holdings in *EME Homer City II*, would support a finding that as of the beginning of Phase 2 of the CSAPR trading programs for SO_2 and annual NO_X, Texas does not have an ongoing transport obligation with respect to the 2006 24-hour $PM_{2.5}$ NAAQS. Thus, even if the EPA had taken final action disapproving Texas' outstanding SIP submission addressing transported pollution with regard to the 2006 24-hour $PM_{2.5}$ NAAQS, such a disapproval would no longer provide a basis for the Agency to issue a FIP in this instance, because without any remaining transport obligation, there is no remaining SIP deficiency to address through a FIP.

[65] Texas has submitted SIPs intended to address its transport obligations under each of these NAAQS. In the case of the 2006 24-hour $PM_{2.5}$ NAAQS, the EPA has proposed to disapprove the state's transport SIP submittal,76 FR 20602 (April 13, 2011), but has yet not taken final action. In the case of the 2012 annual $PM_{2.5}$ NAAQS, the EPA has not yet taken any action on the state's transport SIP submittal.

[66] 81 FR at 78955 n.5.

IV. Sensitivity Analysis Regarding CSAPR Participation as a BART Alternative

A. Summary

As explained in the proposal and summarized in section II.B, the EPA amended the Regional Haze Rule in 2012 to authorize states whose EGUs participate in CSAPR trading programs for a given pollutant to rely on CSAPR participation as a BART alternative for that pollutant. The CSAPR-better-than-BART rule rests on an analytic demonstration that implementation of CSAPR as expected to take effect at that time would achieve greater reasonable progress than BART toward the national goal of natural visibility conditions in Class I areas. As part of the proposal for this action, the EPA included a sensitivity analysis to the 2012 analytic demonstration showing that the 2012 analysis would have supported the same conclusion if the actions being taken in response to the D.C. Circuit's remand of various CSAPR Phase 2 budgets[67] had been reflected in the 2012 analysis. In this action, upon consideration of comments received, the EPA is affirming the sensitivity analysis from the proposal that concluded that the 2012 analytic demonstration is still valid and is consequently affirming that there is no need for revision of the CSAPR-better-than-BART rule as a result of the changes in CSAPR's geographic scope resulting from the Agency's set of responses to the *EME Homer City II* decision.

---

[67] As described in sections II.A and III.D above, in addition to this action, the full set of actions being taken to respond to the remand includes the 2016 CSAPR Update (*see* note 14 above) withdrawing the remanded seasonal NO_X budgets for eleven states and establishing new seasonal NO_X budgets to address a more recent ozone NAAQS for eight of those states, the action approving Alabama's SIP revision establishing state CSAPR trading programs for SO_2 and annual NO_X to replace the corresponding federal CSAPR trading programs (*see* note 53 above), and expected actions to approve proposed SIP revisions for Georgia and South Carolina comparable to Alabama's SIP revision (*see* note 57 above).

The original 2012 analytic demonstration supporting participation in CSAPR as a BART alternative was based on an air quality modeling analysis comparing projected visibility conditions at relevant locations (referred to in the proposal and here simply as "Class I areas") under three scenarios.[68] The first scenario reflected no implementation of either CSAPR or BART, the second scenario reflected implementation of presumptive source-specific BART for both SO_2 and NO_X at BART-eligible EGUs nationwide, and the third scenario reflected implementation of CSAPR in covered states and presumptive source-specific BART for each pollutant in states where CSAPR did not apply for that pollutant (the three scenarios are referred to here as the base case scenario, the BART scenario, and the original CSAPR scenario, respectively). The EPA used the results of the three scenarios to compare the projected visibility impacts of CSAPR and BART under a two-pronged "better-than-BART" test.[69] The first prong – a requirement that visibility must not decline in any Class I area under the proposed BART alternative – was evaluated by comparing the projected visibility conditions under the original CSAPR scenario and the base case scenario. The second prong – a requirement that there must be an overall visibility improvement on average across all affected Class I areas under the proposed BART alternative relative to source-specific BART – was evaluated by comparing the projected visibility conditions under the original CSAPR scenario and the BART scenario. Based on these comparisons, and also taking account of revisions made to CSAPR after the 2011

[68] This background is set forth in greater detail in the proposal. *See* 81 FR at 78961-62.

[69] As described in the proposal, satisfaction of the two-pronged test based on an air quality modeling analysis is one of three ways that an alternative measure may be demonstrated to be "better than BART" under the Regional Haze Rule. 81 FR at 78957.

modeling but before or contemporaneous with the 2012 CSAPR-better-than-BART rule, the EPA concluded that the original CSAPR scenario satisfied both prongs of the test.

The EPA's proposed sensitivity analysis is set forth in detail in the proposal for this action.[70] To reiterate briefly, for the sensitivity analysis, the Agency identified a total of five changes in CSAPR's geographic scope expected to occur as a result of actions responding to the D.C. Circuit's remand: the removal of Florida, North Carolina, and South Carolina from CSAPR for seasonal NO_X; the removal of Texas from CSAPR for annual NO_X; and the removal of Texas from CSAPR for SO_2.[71] With respect to each of the four changes related to NO_X, the EPA explained that the change would not have caused a sufficiently large change in the modeled NO_X emissions in the original CSAPR scenario to materially alter the visibility impacts comparison. For North Carolina and South Carolina, this assessment was based on the fact that the states' EGUs would, or were expected to, remain subject to CSAPR for annual NO_X after the end of their CSAPR obligations for seasonal NO_X.[72] For Florida and Texas, this assessment was based on the small magnitudes of the differences in projected total NO_X emissions from the EGUs in each of those states between the original CSAPR scenario and the relevant other modeled scenarios, combined with the dominance of sulfate impacts compared to nitrate impacts on visibility (especially in the South).[73] With respect to the removal of Texas from CSAPR for SO_2, the EPA

---

[70] 81 FR at 78961-64.

[71] For purposes of the sensitivity analysis, the EPA conservatively did not consider the increased stringency of the CSAPR seasonal NO_X budgets established in the CSAPR Update. *See generally* 81 FR 74504.

[72] 81 FR at 78962.

[73] *Id*. at 78962 (Florida), 78963 (Texas).

explained that the change would have caused a large reduction in the Texas SO_2 emissions as modeled in the original CSAPR scenario,[74] thereby causing the visibility impacts comparison to support the Agency's determination that CSAPR participation met the criteria for a BART alternative even more strongly than the comparison as originally performed in 2012. Thus, because the only material change from the original 2012 analytic demonstration would be the relative visibility improvement in a revised CSAPR scenario resulting from the removal of Texas from CSAPR for SO_2, the sensitivity analysis as proposed indicated that the 2012 analytic demonstration remains valid.

The EPA received substantive comments from two parties with respect to the proposed sensitivity analysis. One commenter agrees with the EPA's conclusion and with all but one detail of the EPA's methodology (which, if changed as suggested by the commenter, would strengthen the Agency's conclusion). The other commenter does not agree with either the conclusion or the methodology, providing several reasons. The remainder of this section

---

[74] As noted above and discussed in the proposal, the original CSAPR scenario reflected projected implementation of CSAPR in covered states and presumptive source-specific BART in states where CSAPR did not apply for a pollutant. If Texas had not been expected to be covered by CSAPR for SO_2, the CSAPR scenario would therefore have reflected SO_2 emissions from Texas EGUs consistent with the implementation of presumptive source-specific SO_2 BART instead of participation in CSAPR. While EPA projected that the CSAPR region overall would have substantially lower SO_2 emissions under CSAPR than under source-specific BART, for some individual states, including Texas, SO_2 emissions under source-specific BART were projected to be lower than under CSAPR. Thus, removing Texas from CSAPR for SO_2 in the CSAPR-better-than-BART analytic demonstration would have resulted in a decrease in projected SO_2 emissions in the CSAPR scenario as modeled for the demonstration. *See* 81 FR at 78962-63. In the proposal, the EPA identified the minimum amount of the projected decrease in Texas SO_2 emissions as 127,300 tons, based on the difference between projected Texas SO_2 emissions under the original CSAPR and BART scenarios. *Id.*; *see also* "Projected Changes in Texas Emissions, Fossil Generation, and Fuel Usage Between the Base Case, BART, and Original CSAPR Scenarios," available in the docket for this action.

summarizes the opposing commenter's principal comments on this topic and provides the Agency's response.

B. Continued CSAPR Participation by Georgia and South Carolina

The commenter states that in order to analyze the impacts on the CSAPR-better-than-BART analytic demonstration from changes caused by the remand, in addition to any other changes evaluated, the EPA must also evaluate the removal of Georgia and South Carolina from CSAPR's SO_2 programs, both because the D.C. Circuit remanded their SO_2 budgets as invalid and because in the commenter's view it is impermissible to rely in such a sensitivity analysis on mere commitments from those states to submit CSAPR SIPs in the future. Further, according to the commenter, allowing these states to continue to participate in CSAPR and then rely on such participation as a BART alternative after their SO_2 budgets have been remanded would be inconsistent with the EPA's previous determinations that states could no longer indefinitely rely on participation in the former Clean Air Interstate Rule (CAIR) trading programs as a BART alternative after the D.C. Circuit found CAIR to be an invalid rule that must be replaced.[75]

[75] In 2005, the EPA promulgated the Clean Air Interstate Rule (CAIR) addressing certain interstate air pollution reduction obligations, 70 FR 25162 (May 12, 2005), and amended the Regional Haze Rule to allow participation in CAIR to be relied on as a BART alternative (the CAIR-better-than-BART rule), 70 FR 39104 (July 6, 2005). The D.C. Circuit upheld the CAIR-better-than-BART rule, *Utility Air Regulatory Group v. EPA*, 471 F.3d 1333 (D.C. Cir. 2006), but later found CAIR invalid and remanded that rule to the Agency for replacement, *North Carolina v. EPA*, 531 F.3d 896 (D.C. Cir. 2008), *modified on rehearing*, 550 F.3d 1176 (D.C. Cir. 2008). The Agency then replaced CAIR with CSAPR, 76 FR 48208, and replaced the CAIR-better-than-BART rule with the CSAPR-better-than-BART rule, 77 FR 33642. In addition, following the remand of CAIR, the Agency disapproved SIP submissions for several states seeking to rely on CAIR as a BART alternative, *e.g.*, 77 FR at 33647.

The EPA disagrees with the comment that the Agency must consider Georgia and South Carolina ineligible to continue to participate in CSAPR's SO_2 programs as a consequence of the remand of their FIP budgets. The CSAPR regulations expressly provide for approval of CSAPR SIPs that meet certain conditions as replacements for CSAPR FIPs, and Georgia and South Carolina (as well as Alabama) have elected to submit such SIPs. The comparison that the commenter draws to the EPA's previous findings that states may no longer rely on participation in CAIR as a BART alternative is inapt, because the basis for such previous findings was that CAIR itself (including its trading programs) would not exist, not that particular CAIR budgets were invalid. Here, the CSAPR trading program will still exist, making it possible for the states to continue to participate in CSAPR through voluntary SIPs notwithstanding the invalidation of the EPA's authority to require compliance with the remanded budgets through FIPs addressing the states' transport obligations.

The EPA considers the comment about reliance on mere commitments to submit SIPs to be largely moot because in the interval between submission of the comment and finalization of this action, Georgia has submitted its SIP revision and South Carolina has submitted its proposed state regulations and has requested that EPA begin the SIP approval process under the Agency's parallel processing procedure.[76] Each of the state trading program rules includes a state budget for SO_2 or annual NO_X emissions equal to that state's current FIP budget. To the extent the commenter believes that for purposes of a sensitivity analysis the Agency may rely only on a SIP that has been approved and not on a SIP or proposed state rule that has been

[76] *See supra* notes 55 and 56.

submitted for EPA approval but not yet approved, the Agency disagrees. Both states' rules take the approach of incorporating by reference the federal CSAPR trading program rules, including the relevant budget amounts, so there are no substantive differences between the state trading program rules being adopted by the states for inclusion in their SIPs and the federal trading program rules that are being replaced. The Agency has proposed to approve both states' SIP revisions[77] and at this time is unaware of any reason why the proposed approvals should not be finalized. In these circumstances, the EPA believes it is reasonable to rely on the SIP submittals for purposes of supporting an analytic assumption that Georgia and South Carolina will continue to participate in CSAPR's SO_2 and annual NO_X programs at the states' current budget levels.[78]

C. Appropriateness of Continued Reliance on Original CSAPR-Better-than-BART Analysis

The commenter states that the sensitivity analysis is arbitrary because it is based on outdated material, and that instead of evaluating whether the 2012 analytic demonstration remains valid, the EPA must perform an entirely new analytic demonstration based on a new air quality modeling analysis using more current data.

The EPA disagrees with this comment. While criticizing aspects of the Agency's analytic methodology, the commenter does not dispute that the sensitivity analysis as conducted by the EPA using that methodology shows that the 2012 analytic demonstration would have been strengthened rather than weakened by the changes in CSAPR's geographic scope that are

---

[77] *See supra* note 57.

[78] As discussed in section III.D above, both states continue to participate in the CSAPR SO_2 and annual NO_X programs through FIPs while Agency action on their SIP submittals is pending.

occurring as a result of the D.C. Circuit's remand. (The methodological criticisms are addressed as the next comment below.) Further, the commenter offers no compelling support for the suggestion that, in the absence of any reason to doubt the conclusion from the 2012 analytic demonstration, the EPA must nevertheless conduct an entirely new demonstration. As an asserted legal rationale for the need for a new analysis, the commenter cites the Regional Haze Rule provisions for approval of BART alternatives, noting that the provision that the EPA followed in approving the CSAPR-better-than-BART rule requires a demonstration based on an air quality modeling analysis.[79] The EPA has performed one such air quality modeling analysis and in this action has shown that the analysis already performed would continue to support a conclusion that CSAPR meets the criteria for a BART alternative notwithstanding changes in CSAPR's geographic scope. Contrary to the commenter's suggestion, the regulations do not say that the EPA must perform an entirely new analysis. Similarly, the commenter's assertion that changes in industry data since 2011 necessitate a new analytic demonstration amounts to a call for recurring demonstrations that a BART alternative results in greater reasonable progress than BART as the industry evolves, rather than a one-time demonstration when the alternative is approved. The regulations include no such requirement for recurring demonstrations.

D. Possible Changes in the Geographic Distribution of Emissions

The commenter states that the EPA's methodology for conducting the sensitivity analysis as set forth in the proposal failed to adequately consider whether changes in a revised CSAPR scenario regarding the geographic distribution of emissions across states or within individual

[79] *See* 40 CFR 51.308(e)(3).

states might lead to violations of the analytic criteria that the EPA relied on to find that CSAPR qualifies as a BART alternative. In particular, the commenter raises the theoretical possibility that, in a revised CSAPR scenario where Texas EGUs no longer participate in CSAPR for SO_2, some individual sources in other CSAPR states could buy additional allowances and increase their emissions, and that such increases in emissions in turn could cause adverse visibility impacts in some individual Class I areas (thereby violating the first prong of the two-pronged test described above). More generally, the commenter asserts that without new modeling the EPA "has no data" and has "simply assume[d]" that the two prongs of the test would be satisfied under such a revised scenario.

As an initial matter, the EPA disagrees with the commenter's summary characterization of the proposed sensitivity analysis as not being grounded in data. To the contrary, the Agency's proposed conclusions explicitly rely on data drawn from the modeling results in the record for the CSAPR-better-than-BART rule. The EPA explained in the proposal, first, how the data from the earlier rulemaking record showed that a revised CSAPR scenario would reflect a projected reduction in Texas SO_2 emissions of 127,300 tons (or more)[80] along with projected increases in

[80] The 127,300-ton amount was described in the proposal as the minimum reduction in projected Texas SO_2 emissions because it did not reflect a 50,500-ton increase in the Texas SO_2 budget that occurred after the original CSAPR scenario was modeled. If that budget increase had been reflected in the original CSAPR scenario, modeled Texas EGU SO_2 emissions in that scenario would likely have been higher, potentially by the full 50,500-ton amount. The CSAPR budget increase would have had no effect on Texas EGUs' modeled SO_2 emissions under BART. As a consequence, the 127,300-ton minimum estimate of the reduction in projected Texas SO_2 emissions caused by removing Texas EGUs from CSAPR for SO_2, which are computed as the difference between Texas EGUs' collective emissions in the original CSAPR scenario and the BART scenario, may be understated by as much as 50,500 tons.

Florida and Texas NO_X emissions of at most a few thousand tons and, second, why it was logical to conclude from these projected emissions changes that, relative to the modeled BART and base case scenarios, the revised CSAPR scenario would have shown even larger visibility improvements than the original CSAPR scenario.[81] The commenter provides no data of any kind, let alone data that might challenge the data presented in the proposal.

Turning to the commenter's more specific methodological criticism – that the Agency has not sufficiently considered whether shifts in the geographic distribution of emissions might lead to violations of the two-pronged test – the EPA agrees that the potential for such shifts was not expressly addressed in the sensitivity analysis as proposed. For the final action, the EPA has therefore performed further analysis to address this comment, focusing on the specific circumstance identified by the commenter – shifts associated with the removal of Texas EGUs from CSAPR for SO_2 – because the Agency agrees that this is the most significant change to CSAPR among the actions that have been or are expected to be taken in response to the D.C. Circuit's remand.[82] The further analysis is based on state- and unit-level data disaggregated

---

[81] 81 FR at 78962-64.

[82] As summarized above, the Agency explained in the proposal that the removal of Florida, North Carolina, South Carolina, and Texas EGUs from CSAPR for either seasonal or annual NO_X, as applicable, would not have caused sufficient changes in modeled NO_X emissions in a revised CSAPR scenario to materially alter the visibility impacts comparison, in some instances because the EGUs would remain subject to another CSAPR NO_X program and in some instances because of the small magnitudes of the differences in projected total NO_X emissions from the EGUs in each of those states between the original CSAPR scenario and the relevant other modeled scenarios, combined with the dominance of sulfate impacts compared to nitrate impacts on visibility (especially in the South). The EPA believes these same factors likewise indicate that the visibility impacts of any potential shifts in the geographic distribution of NO_X emissions related to removal of these states from the CSAPR NO_X programs would not be material to either prong of the two-pronged visibility impacts comparison.

from the projections of electricity generation, fuel usage, and emissions developed for the base case, BART, and original CSAPR scenarios that were compared in the 2012 analytic demonstration.[83]

Based on this additional analysis, the EPA finds that, in addition to the projected SO_2 emissions reduction of at least 127,300 tons in Texas identified in the proposal,[84] a revised CSAPR scenario without Texas in CSAPR for SO_2 could also reflect a projected aggregated increase in SO_2 emissions of approximately 22,300 tons in the six other states in the CSAPR SO_2 Group 2 trading program (Alabama, Georgia, Kansas, Minnesota, Nebraska, and South Carolina). The reason for this adjustment is that in the original CSAPR scenario, Texas EGUs were projected to emit 22,300 tons of SO_2 in excess of the state's SO_2 budget.[85] This would have been possible through the use of allowances purchased from EGUs in other SO_2 Group 2 states. Under a revised CSAPR scenario where Texas EGUs are no longer part of the CSAPR trading program, Texas EGUs would no longer purchase the 22,300 allowances from the other states, and the EGUs in those other states could potentially use those allowances to increase their own collective SO_2 emissions. Much or all of the total potential increase in emissions in the other states would be projected to occur in Alabama and Georgia, because in the original

---

[83] The state- and plant-level data are derived from the unit-level data in three spreadsheets included in the final CSAPR-better-than-BART rulemaking record and available in the docket for this action: IPM Parsed File for CSAPR Base Case Scenario 2014 (EPA-HQ-OAR-2011-0729-0004), IPM Parsed File for National BART Scenario 2014 (EPA-HQ-OAR-2011-0729-0008), and IPM Parsed File for CSAPR-BART Scenario 2014 (EPA-HQ-OAR-2011-0729-0006).

[84] *See supra* note 74.

[85] *See* "Projected Interstate Trading of CSAPR SO_2 Group 2 Allowances in the Original CSAPR Scenario," available in the docket for this action.

CSAPR scenario the collective emissions from Kansas EGUs were projected to already be at the state's "assurance level" – the emissions level above which EGUs trigger a CSAPR provision requiring the surrender of three allowances instead of one allowance per ton of emissions – and the collective emissions from Minnesota, Nebraska, and South Carolina EGUs were projected to already be close to their states' respective assurance levels.[86] After accounting for the potential 22,300-ton offsetting adjustment, the net regional SO_2 reduction under the revised CSAPR scenario relative to the original CSAPR scenario would be projected to be approximately 105,000 tons (or more) instead of 127,300 tons (or more) as described in the proposed sensitivity analysis.[87] For the reasons below, the EPA has considered both the projected decrease in Texas SO_2 emissions and the projected aggregated increase in SO_2 emissions in the other states and has concluded that the two-pronged CSAPR-better-than-BART test described above would continue to be satisfied.

---

[86] *Id.*

[87] It is possible that if the original CSAPR scenario that includes Texas in CSAPR for SO_2 had been remodeled to include the 50,500 increase in the Texas SO_2 budget described in the proposal and in footnote 80, Texas EGUs would have been projected to purchase either more or less than 22,300 allowances from EGUs in other CSAPR SO_2 Group 2 states, and that a revised CSAPR scenario in which Texas was removed from CSAPR for SO_2 would therefore have shown the other Group 2 states increasing their SO_2 emissions by this different amount. Regardless of the amount or direction of any modeled change in Texas EGUs' CSAPR allowance purchases, that change would generally have been matched by an equal and opposite change in Texas EGUs' projected emissions under CSAPR, with the result that the overall net projected reduction in emissions caused by removing Texas from CSAPR for SO_2 would continue to be at least 105,000 tons. The maximum amount of CSAPR SO_2 allowances that Texas could purchase from other states and use in a given year without incurring 3-for-1 allowance surrender requirements is approximately 53,000 tons, which is the amount of Texas' SO_2 variability limit – the difference between the state's budget and its assurance level – under the CSAPR regulations. *See* 40 CFR 97.710(b)(7).

As summarized above, the first prong of the two-pronged test requires that visibility conditions must not decline in any Class I area. In the 2012 analytic demonstration, the EPA evaluated this prong by comparing visibility impacts at each affected Class I area under the original CSAPR scenario and the base case scenario. The situation identified by the commenter in which emissions under a revised CSAPR scenario might rise at some individual EGUs sufficiently to cause a decline in visibility at some individual Class I area relative to visibility conditions in the base case scenario – that is, without either CSAPR or BART – would be a very unusual event and likely can be ruled out as impossible, or nearly so, in a scenario such as the revised CSAPR scenario being considered. Under the base case scenario, EGUs incur no cost at all under CSAPR for emitting a ton of SO_2. In contrast, under either the original CSAPR scenario or a revised CSAPR scenario, EGUs would incur some cost per ton of SO_2 emissions under CSAPR, and where that new cost is the principal change from the base case scenario, EGUs that emit SO_2 would generally be projected to either decrease or maintain their emissions relative to the base case scenario where that cost was not present. If in a revised CSAPR scenario, allowances are more plentiful and the cost incurred per ton of SO_2 emissions therefore is less than the cost per ton under the original CSAPR scenario, some EGUs that emit SO_2 would be projected to reduce their SO_2 emissions by a smaller amount than in the original CSAPR scenario, but they generally would not be projected to significantly *increase* their emissions relative to the base case scenario. An exception to this general principle could occur if some other factor influencing EGUs' operating decisions, such as electricity demand or relative fuel prices, also changed. The EPA therefore considered whether the removal of Texas from CSAPR could have been projected to result in any material change in demand for generation from

other states or relative fuel prices in other states in a revised CSAPR scenario compared to the original CSAPR scenario.[88]

With respect to the possibility of changes in electricity demand in other states, record data show that, relative to the original CSAPR scenario, aggregated 2014 generation from fossil-fired Texas EGUs was projected to increase by 0.2% in the BART scenario (which is used here as a proxy representing the operating behavior of Texas EGUs in a revised CSAPR scenario), indicating that removal of Texas EGUs from CSAPR for SO_2 and implementation of SO_2 BART would not be projected to result in an increase in emissions outside Texas caused by a shift in generation from Texas to other states.[89]

With respect to changes in relative fuel prices in other states, record data show that, relative to the original CSAPR scenario, in the BART scenario Texas EGUs were projected to decrease their use of subbituminous coal by 68 trillion Btus (TBtu), increase their use of lignite by 66 TBtu, and increase their use of other fossil fuels (predominantly natural gas) by 11 TBtu.[90] The changes in projected Texas usage of subbituminous coal and natural gas are less than 1% of the projected total industry usage of those fuels nationwide under the original CSAPR scenario,

---

[88] Although the analysis focuses on other CSAPR states, consistent with the concerns raised by the commenter, the EPA notes that absent changes in generation demand or relative fuel prices, removal of Texas from CSAPR would also be expected not to affect the operating decisions of EGUs in non-CSAPR states.

[89] *See* "Projected Changes in Texas Emissions, Fossil Generation, and Fuel Usage Between the Base Case, BART, and Original CSAPR Scenarios," available in the docket for this action. Because there is little difference in NO_X emissions from Texas EGUs between the original CSAPR scenario, the BART scenario, and the base case scenario, *id.*, the EPA considers the BART scenario a reasonable emissions proxy for a revised CSAPR scenario in which Texas EGUs would be subject to BART for SO_2 but not for NO_X.

[90] *See id.*

indicating that there is no reason to expect material impacts on prices or usage of those fuels in other states. Unlike subbituminous coal and natural gas, lignite is an inherently local fuel that is consumed near the point of extraction because the fuel's low energy content per unit of weight makes shipment over long distances uneconomic. Thus, although the increase in Texas EGUs' projected usage of lignite is fairly large (8.2% of projected national usage of lignite under the original CSAPR scenario), any resulting increase in the local prices of lignite would not be expected to affect the mix of fuels used in other states.

For further confirmation of the applicability here of the general principle discussed above – namely, that in a modeled CSAPR scenario, EGUs that emit SO_2 would generally be projected to either decrease or maintain their emissions and not to increase their emissions relative to the base case scenario – the EPA compared the projected unit-level SO_2 emissions in the original CSAPR and base case scenarios for all coal-fired EGUs in the seven states in the CSAPR SO_2 Group 2 trading program. The results of the comparison clearly indicate that the general principle applies in this instance: 77 units were projected to reduce their SO_2 emissions by 1,000 tons or more (in amounts up to 57,000 tons), 106 units were projected to essentially maintain their SO_2 emissions (increasing or decreasing by between 0 and 1,000 tons), and 2 units were projected to increase their SO_2 emissions by approximately 1,100 tons each.[91] A similar comparison at the state level shows that collective SO_2 emissions from the sets of EGUs in each of the seven states were also projected to decrease from the base case scenario to the

[91] *See* "Projected Changes in Unit-Level Emissions Between the Base Case and Original CSAPR Scenarios," available in the docket for this action.

original CSAPR scenario (in amounts ranging from 1,900 tons for Nebraska to 248,800 tons for Alabama).[92] In combination with the data above showing that removal of Texas from CSAPR for SO_2 would not be expected to cause changes in demand for generation or relative fuel prices in other states, the EPA believes that these data on how EGUs were projected to comply with CSAPR in the original CSAPR scenario indicate that in a revised CSAPR scenario where Texas is removed from CSAPR for SO_2 and 22,300 additional allowances (or up to 53,000 allowances, as noted earlier[93]) therefore become available to the EGUs in the other SO_2 Group 2 states, few if any EGUs would respond to the availability of the additional allowances by increasing their emissions materially above their emissions in the base case scenario. Further, even if some EGUs did increase their emissions above their emissions in the base case scenario, because of the regional nature of sulfate formation from SO_2 emissions and the very large decreases in SO_2 emissions across the broader region, the EPA believes that any such local increase would be unlikely to cause localized visibility degradation in any Class I area near a CSAPR state affected by the removal of Texas from CSAPR for SO_2. In consequence, the Agency finds it reasonable to conclude that in such a revised CSAPR scenario, no such Class I areas would experience declines in visibility conditions relative to the base case scenario.

The second prong of the two-pronged test requires the average projected visibility improvement across all affected Class I areas to be greater under the BART alternative than under BART. In the proposal, the EPA proposed to conclude that this prong would be easily satisfied under the revised CSAPR scenario because Texas EGUs would be modeled in the

---

[92] *See id.*

[93] *See supra* note 87.

revised CSAPR scenario as subject to SO_2 BART instead of being subject to CSAPR for SO_2, and the record data showed that Texas EGUs' projected SO_2 emissions would be at least 127,300 tons lower under BART than under CSAPR. As discussed above, based on further analysis the EPA concludes that the decrease in projected Texas SO_2 emissions could potentially be partially offset by an increase in projected SO_2 emissions in other CSAPR SO_2 Group 2 states, most likely Alabama or Georgia. The EPA believes that such a revised CSAPR scenario would continue to show greater average visibility improvement than the BART scenario (and greater than the original CSAPR scenario), again easily passing the second prong of the two-pronged test. Any reduction in visibility improvement in Class I areas near Alabama, Georgia, or the other Group 2 states relative to the original CSAPR scenario would be more than offset by greater visibility improvement in Class I areas near Texas.[94] Due to the regional nature of sulfate particulate matter formation, it is highly likely that, like the original CSAPR scenario, the revised CSAPR scenario would show greater visibility improvement on average across all Class I areas than the BART scenario. The commenters did not present any information to indicate otherwise, and the EPA is not aware of any such information.

[94] The CSAPR-better-than-BART record shows that the Class I areas most impacted by Texas were projected to have greater modeled visibility improvement in the BART scenario (on the 20% best days) than in the CSAPR scenario. This indicates that there would have been additional visibility improvement in a revised CSAPR scenario in which Texas is not in CSAPR for SO_2 and is therefore modeled at BART SO_2 levels. Note that the average visibility improvements across all affected Class I areas as computed in the original CSAPR and BART scenarios are much closer on the 20% best days than on the 20% worst days. Therefore, in determining whether the second prong of the two-pronged test will be passed under a revised CSAPR scenario, the modeled results on the 20% best days are particularly important.

E. Validity of 2012 Analytic Demonstration Prior to CSAPR Changes

Finally, the commenter asserts that regardless of the character of the sensitivity analysis itself, the original 2012 CSAPR-better-than-BART analytic demonstration was arbitrary, rendering any sensitivity analysis performed regarding the original demonstration arbitrary. In support of this claim, the commenter incorporates by reference all criticisms of the original analytic demonstration contained in the comments submitted by the commenter in the original CSAPR-better-than-BART rulemaking as well as all criticisms contained in the commenter's brief in the pending litigation challenging the CSAPR-better-than-BART rule.

The EPA rejects these comments as both improperly raised and outside the scope of this proceeding. The EPA appreciates the value of public input in the rulemaking process and seeks to fulfill its legal obligation to consider and respond to all substantive comments that are "raised with reasonable specificity,"[95] but catch-all references to whatever statements may have been made in another proceeding do not meet this standard. Moreover, even if they had been properly raised, comments concerning the legal validity of the original 2012 analytic demonstration are beyond the scope of this rulemaking, which concerns only the sensitivity analysis addressing the effect on the 2012 analytic demonstration of changes in CSAPR's geographic scope resulting from the D.C. Circuit's remand (as well as the withdrawal of Texas CSAPR FIP requirements for SO_2 and annual NO_X and the finding as to Texas' remaining transport obligation under CAA section 110(a)(2)(D)(i)(I) regarding the 1997 annual $PM_{2.5}$ NAAQS). Arguments concerning the original 2012 analytic demonstration should be, and have

[95] CAA section 307(d)(7)(B).

been, raised in the original CSAPR-better-than-BART rulemaking and in the pending litigation over that rule.

V. Description of Amendments to Regulatory Text

In order to implement the withdrawal of the FIP provisions requiring Texas EGUs to participate in the CSAPR NO_X Annual Trading Program and the CSAPR SO_2 Group 2 Trading Program with regard to emissions occurring in Phase 2 of those programs, the EPA is amending the regulatory text at 40 CFR 52.38(a)(2), 52.39(c), 52.2283(c), and 52.2284(c) to provide that Texas EGUs are subject to requirements under these two programs with regard to emissions occurring in 2015 and 2016 only. Conforming amendments to cross-references are being made at § 52.38(a)(3), (a)(4), (a)(5), (a)(6), and (a)(8)(iii) and § 52.39(g), (h), (i), (j), and (m)(3).

The EPA is also clarifying the CSAPR regulations by adding the introductory headings "Annual emissions" and "Ozone season emissions" to § 52.38(a) and (b), respectively, and by amending the wording of the regulatory text at §§ 52.38(b)(2)(i) and 52.39(b) to parallel the wording of the newly amended regulatory text at §§ 52.38(a)(2)(i) and 52.39(c)(1). These editorial clarifications do not alter any existing regulatory requirements.

Finally, the EPA is correcting the CSAPR regulations applicable to South Carolina EGUs by amending the regulatory text at § 52.2141(b) to reference CSAPR SO_2 Group 2 allowances and 40 CFR part 97, subpart DDDDD instead of CSAPR SO_2 Group 1 allowances and 40 CFR part 97, subpart CCCCC. The corrections make the text at § 52.2141(b) consistent with the existing text at § 52.2141(a), and the two paragraphs together now correctly reflect the existing regulatory requirements applicable to South Carolina EGUs as already set forth at § 52.39(c) and (k).

VI. Statutory and Executive Order Reviews

Additional information about these statutes and Executive Orders can be found at *http://www2.epa.gov/laws-regulations/laws-and-executive-orders*.

A. Executive Order 12866: Regulatory Planning and Review, and Executive Order 13563: Improving Regulation and Regulatory Review

This action is not a significant regulatory action and therefore was not submitted to the Office of Management and Budget (OMB) for review.

B. Executive Order 13771: Reducing Regulations and Controlling Regulatory Costs

This action is not expected to be an Executive Order 13771 regulatory action because this action is not significant under Executive Order 12866.

C. Paperwork Reduction Act

This action does not impose any new information collection burden under the Paperwork Reduction Act. The OMB has previously approved the information collection activities contained in the existing regulations and has assigned OMB control number 2060-0667. The withdrawal of the FIP provisions in this action will eliminate the obligations of Texas sources to comply with the existing monitoring, recordkeeping, and reporting requirements under the CSAPR SO_2 Group 2 Trading Program and the CSAPR NO_X Annual Trading Program.

D. Regulatory Flexibility Act

I certify that this action will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act. In making this determination, the impact

of concern is any significant adverse economic impact on small entities. An agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, has no net burden, or otherwise has a positive economic effect on the small entities subject to the rule. This action withdraws existing regulatory requirements for some entities and does not impose new requirements on any entity. We have therefore concluded that this action will either relieve or have no net regulatory burden for all directly regulated small entities.

E. Unfunded Mandates Reform Act

This action does not contain any unfunded mandate as described in the Unfunded Mandates Reform Act, 2 U.S.C. 1531-1538, and does not significantly or uniquely affect small governments. The action imposes no enforceable duty on any state, local, or tribal governments or the private sector. This action simply eliminates certain federal regulatory requirements that the D.C. Circuit has held invalid.

F. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. This action simply eliminates certain federal regulatory requirements that the D.C. Circuit has held invalid.

G. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments

This action does not have tribal implications as specified in Executive Order 13175. It will not have substantial direct effects on tribal governments, on the relationship between the

federal government and Indian tribes, or on the distribution of power and responsibilities between the federal government and Indian tribes. This action simply eliminates certain federal regulatory requirements that the D.C. Circuit has held invalid. Thus, Executive Order 13175 does not apply to this action. Consistent with the EPA Policy on Consultation and Coordination with Indian Tribes, the EPA consulted with tribal officials while developing CSAPR. A summary of that consultation is provided in the preamble for CSAPR, 76 FR 48208, 48346 (August 8, 2011).

H. Executive Order 13045: Protection of Children from Environmental Health and Safety Risks

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of "covered regulatory action" in section 2-202 of the Executive Order. This action is not subject to Executive Order 13045 because it simply eliminates certain federal regulatory requirements that the D.C. Circuit has held invalid.

I. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

This action is not subject to Executive Order 13211, because it is not a significant regulatory action under Executive Order 12866.

J. National Technology Transfer Advancement Act

This rulemaking does not involve technical standards.

K. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations

The EPA believes that this action is not subject to Executive Order 12898 because it does not establish an environmental health or safety standard. This action simply eliminates certain federal regulatory requirements that the D.C. Circuit has held invalid. Consistent with Executive Order 12898 and the EPA's environmental justice policies, the EPA considered effects on low-income populations, minority populations, and indigenous peoples while developing CSAPR. The process and results of that consideration are described in the preamble for CSAPR, 76 FR 48208, 48347-52 (August 8, 2011).

L. Congressional Review Act

This action is subject to the Congressional Review Act, and the EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

M. Judicial Review and Determinations Under CAA Section 307(b)(1) and (d)

CAA section 307(b)(1) indicates which federal appellate courts have venue for petitions of review of final actions by the EPA. This section provides, in part, that petitions for review must be filed in the D.C. Circuit Court of Appeals if (i) the agency action consists of "nationally applicable regulations promulgated, or final action taken, by the Administrator," or (ii) such action is locally or regionally applicable, if "such action is based on a determination of nationwide scope or effect and if in taking such action the Administrator finds and publishes that such action is based on such a determination." This final action is "nationally applicable." In

addition, the EPA finds that all aspects of this action are based on a determination of "nationwide scope and effect" within the meaning of section 307(b)(1).

First, the EPA's withdrawal of FIP requirements under the CSAPR program for Texas is being undertaken in response to a remand by the D.C. Circuit in litigation that challenged numerous aspects of CSAPR with implications for multiple states and resulted in the remand of fifteen budgets for thirteen states. Retaining review in the D.C. Circuit is appropriate and avoids the potential that another court is forced to interpret the remand order of a sister circuit. Also, the finding that, after the FIP withdrawal, Texas has no remaining obligation to address interstate transport with respect to the 1997 annual $PM_{2.5}$ NAAQS is based on a common core of factual findings and analyses concerning the transport of pollutants between the different states subject to CSAPR, which is a nationally applicable program. Further, this action is based on a determination that modifies the scope and effect of CSAPR; thus, any judicial review of this action will necessarily implicate the national-level policies, technical analyses, or interpretations that undergird this nationwide program.

Second, in express consideration of the effect of the withdrawal of Texas FIP requirements accomplished through this final action, the EPA is affirming the continued validity of 40 CFR 51.308(e)(4), a regulatory provision available to each of the 27 States whose sources currently participate in one or more CSAPR trading programs. This determination affects the rights and interests of regulated parties and other stakeholders throughout the eastern United States relying on or otherwise affected by that regulatory provision.

For these reasons, this final action is nationally applicable and, in addition, the Administrator finds that this final action is based on a determination of nationwide scope and

effect for purposes of section 307(b)(1). Thus, pursuant to section 307(b) any petitions for review of this action must be filed in the D.C. Circuit within 60 days from the date of publication of this action in the *Federal Register*.

In addition, pursuant to CAA sections 307(d)(1)(B), 307(d)(1)(J), and 307(d)(1)(V), the Administrator determines that this action is subject to the provisions of section 307(d). CAA section 307(d)(1)(B) provides that section 307(d) applies to, among other things, "the promulgation or revision of an implementation plan by the Administrator under [CAA section 110(c)]." 42 U.S.C. 7607(d)(1)(B). Under section 307(d)(1)(J), the provisions of section 307(d) apply to the "promulgation or revision of regulations . . . relating to . . . protection of visibility." 42 U.S.C. 7607(d)(1)(J). Under section 307(d)(1)(V), the provisions of section 307(d) also apply to "such other actions as the Administrator may determine." 42 U.S.C. 7607(d)(1)(V). The agency has complied with the procedural requirements of CAA section 307(d) during the course of this rulemaking.

CAA section 307(b)(1) also provides that filing a petition for reconsideration by the Administrator of this rule does not affect the finality of the rule for the purposes of judicial review, does not extend the time within which a petition for judicial review may be filed, and does not postpone the effectiveness of the rule. Under CAA section 307(b)(2), the requirements established by this rule may not be challenged separately in any civil or criminal proceedings brought by the EPA to enforce these requirements.

List of Subjects in 40 CFR Part 52

Environmental protection, Administrative practice and procedure, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen oxides, Ozone, Particulate matter, Regional haze, Reporting and recordkeeping requirements, Sulfur dioxide.

Dated:_____

_____

E. Scott Pruitt,

Administrator.

For the reasons stated in the preamble, part 52 of chapter I of title 40 of the *Code of Federal Regulations* is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

■ 1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq*.

Subpart A—General Provisions

■ 2. Section 52.38 is amended by:

a. Adding paragraph (a) heading;

b. Revising paragraph (a)(2);

c. In paragraph (a)(3) introductory text, removing the text "(a)(2)" and in its place adding the text "(a)(2)(i) or (ii)";

d. In paragraph (a)(4) introductory text, removing the text "(a)(2)" and in its place adding the text "(a)(2)(i)";

e. In paragraphs (a)(5) introductory text and (a)(6), removing the text "(a)(2)" and in its place adding the text "(a)(2)(i)", and removing the text "(a)(1) through (4)" and in its place adding the text "(a)(1), (a)(2)(i), and (a)(3) and (4)";

f. In paragraph (a)(8)(iii), removing the text "(a)(1) through (4)" and in its place adding the text "(a)(1), (a)(2)(i), and (a)(3) and (4)";

g. Adding paragraph (b) heading; and

h. In paragraph (b)(2)(i), after the word "emissions" adding the word "occurring".

The additions and revisions read as follows:

§ 52.38 What are the requirements of the Federal Implementation Plans (FIPs) for the Cross-State Air Pollution Rule (CSAPR) relating to emissions of nitrogen oxides?

(a) *Annual emissions*. * * *

(2)(i) The provisions of subpart AAAAA of part 97 of this chapter apply to sources in each of the following States and Indian country located within the borders of such States with regard to emissions occurring in 2015 and each subsequent year: Alabama, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Maryland, Michigan, Minnesota, Missouri, Nebraska, New Jersey, New York, North Carolina, Ohio, Pennsylvania, South Carolina, Tennessee, Virginia, West Virginia, and Wisconsin.

(ii) The provisions of subpart AAAAA of part 97 of this chapter apply to sources in each of the following States and Indian country located within the borders of such States with regard to emissions occurring in 2015 and 2016 only: Texas.

* * * * *

(b) *Ozone season emissions*. * * *

■ 3. Section 52.39 is amended by:

a. In paragraph (b), before the colon adding the text "with regard to emissions occurring in 2015 and each subsequent year";

b. Revising paragraph (c);

c. In paragraph (g) introductory text, removing the text "(c)" and in its place adding the text "(c)(1) or (2)";

d. In paragraph (h) introductory text, removing the text "(c)" and in its place adding the text "(c)(1)";

e. In paragraphs (i) introductory text and (j), removing the text "(c)" two times and in its place adding the text "(c)(1)"; and

f. In paragraph (m)(3), removing the text "(c)" and in its place adding the text "(c)(1)".

The revisions read as follows:

§ 52.39 What are the requirements of the Federal Implementation Plans (FIPs) for the Cross-State Air Pollution Rule (CSAPR) relating to emissions of sulfur dioxide?

* * * * *

(c)(1) The provisions of subpart DDDDD of part 97 of this chapter apply to sources in each of the following States and Indian country located within the borders of such States with regard to emissions occurring in 2015 and each subsequent year: Alabama, Georgia, Kansas, Minnesota, Nebraska, and South Carolina.

(2) The provisions of subpart DDDDD of part 97 of this chapter apply to sources in each of the following States and Indian country located within the borders of such States with regard to emissions occurring in 2015 and 2016 only: Texas.

* * * * *

Subpart PP—South Carolina

§ 52.2141 [Amended]

■ 4. Section 52.2141, paragraph (b) is amended by removing the text "Group 1" two times and in its place adding the text "Group 2", and removing the text "CCCCC" two times and in its place adding the text "DDDDD".

Subpart SS—Texas

■ 5. Section 52.2283 is amended by revising paragraph (c)(1) and removing and reserving paragraph (c)(2) to read as follows:

§ 52.2283 Interstate pollutant transport provisions; What are the FIP requirements for decreases in emissions of nitrogen oxides?

* * * * *

(c)(1) The owner and operator of each source and each unit located in the State of Texas and Indian country within the borders of the State and for which requirements are set forth under the CSAPR NO_X Annual Trading Program in subpart AAAAA of part 97 of this chapter must comply with such requirements with regard to emissions occurring in 2015 and 2016.

(2) [Reserved]

* * * * *

■ 6. Section 52.2284 is amended by revising paragraph (c)(1) and removing and reserving paragraph (c)(2) to read as follows:

§ 52.2284 Interstate pollutant transport provisions; What are the FIP requirements for decreases in emissions of sulfur dioxide?

* * * * *

(c)(1) The owner and operator of each source and each unit located in the State of Texas and Indian country within the borders of the State and for which requirements are set forth under the CSAPR SO_2 Group 2 Trading Program in subpart DDDDD of part 97 of this chapter must comply with such requirements with regard to emissions occurring in 2015 and 2016.

(2) [Reserved]